

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 275

RULES GOVERNING PROCEDURES FOR HISTORIC PRESERVATION

REVIEW FOR GOVERNMENTAL PROJECTS COVERED UNDER

SECTIONS 6E-7 AND 6E-8

§13-275-1	Purpose, applicability, and participants
§13-275-2	Definitions
§13-275-3	Conducting a historic preservation review; generally
§13-275-4	Fees
§13-275-5	Identification and inventory of historic properties
§13-275-6	Evaluation of significance
§13-275-7	Determining effects to significant historic properties
§13-275-8	Mitigation
§13-275-9	Verification of completion of the detailed mitigation plan
§13-275-10	Conclusion of the historic preservation review process
§13-275-11	Reconsideration of findings after the process is closed
§13-275-12	Discovery of previously unknown historic properties during implementation of a project
§13-275-13	Emergency projects
§13-275-14	Penalty

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§13-275-1 Purpose, applicability, and participants. (a) The purpose of this chapter is to promote the use and conservation of historic properties for the education, inspiration, pleasure, and enrichment of the citizens of Hawaii by articulating a historic preservation review process for state and county projects. The review process is designed to identify significant historic properties in project areas and then to develop and execute plans to handle impacts to the significant historic properties in the public interest. The process supports the policy of chapter 6E, HRS, to preserve, restore, and maintain historic properties for future generations.

(b) This chapter applies to all state or county agencies funding or directly undertaking a project, or having a project undertaken on lands under its ownership or control which may affect historic properties, or by a state agency transferring any land under its jurisdiction which may contain historic properties. Any proposed project which may affect an historic property shall not be commenced, or, in the event it has already begun, continued, until DLNR, as represented by SHPD, shall have given its written concurrence. This chapter itemizes the process to obtain concurrence.

(c) Participants in the historic preservation review process.

(1) The primary participants in the process are DLNR, represented by the SHPD, and the agency with jurisdiction over the project. The agency has responsibility for complying with the historic preservation review process. The agency may have others prepare the review process items. In the case of projects involving archaeological properties, the SHPD may request, within five days of receipt of any report or plan, that the agency contract with an authorized review archaeologist to review any submitted reports or plans. The authorized review archaeologist shall submit its findings and comments to the SHPD.

(2) Interested persons are those organizations and individuals that are concerned with the effect of a project on historic properties. Provisions in these rules enable interested persons to participate in the process. [Eff]
(Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-2 Definitions. As used in this chapter unless the context requires otherwise:

"Agency" means any state or county governmental entity.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in a delineated area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Architectural inventory survey" means the process of identifying and documenting the architectural historic properties in a delineated area and providing the information to the department.

"Architectural recordation" means the form of mitigation that records and analyzes through architectural study a reasonable and adequate amount of the information about a significant historic property.

"Authorized review archaeologist" means an archaeologist who meets the qualifications enumerated in chapter 13-281, and is hired by a person to personally review archaeological reports and plans prepared for the person by another archaeologist.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consensus determination" means the evaluation of a historic property's significance, arrived at by the consensus of the SHPD and the agency.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Cultural significance" means a historic property is of value to an ethnic group in the State due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

"Department" or "DLNR" means the state department of land and natural resources.

"Detailed mitigation plan" means the specific plan for mitigation, including, but not limited to, a preservation plan, an archaeological data recovery plan, an ethnographic documentation plan, an historic data recovery

plan, a burial treatment plan, and an architectural recordation plan. The detailed mitigation plan serves as a scope of work for mitigation.

"Determination letter" means the SHPD's written response which either concurs or does not concur with an agency's proposed project.

"Ethnographic documentation" means the form of mitigation that records and analyzes a reasonable and adequate amount of information about a significant historic property, through interviews with knowledgeable individuals and the study of historical source materials.

"Ethnographic inventory survey" means the process of identifying and documenting historic properties in a delineated area, gathering information through interviews with individuals knowledgeable about the area and a study of historical source materials.

"Historic data recovery" means the form of mitigation that records, compiles, and analyzes a reasonable and adequate amount of information about a significant historic property prior to its destruction, through the study of historical source materials.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Interested persons" means those organizations and individuals that are concerned with the effect of a project on historic properties.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic documentation, historic data recovery, and architectural recordation.

"Mitigation commitment" means the commitment to the form of mitigation to be undertaken for each significant historic property.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or a criterion of cultural significance.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.

"Traditional cultural property" means any historic property associated with the traditional practices and beliefs of an ethnic community or members of that community for more than fifty years. These traditions shall be founded in an ethnic community's history and contribute to maintaining the ethnic community's cultural identity. Traditional associations are those demonstrating a continuity of practice or belief until present or those documented in historical source materials, or both. [Eff:]
(Auth: HRS §§6E-2, 6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-3 Obtaining a determination letter; generally. (a) For the department to provide a letter of determination, an agency proposing a project which may effect historic properties shall notify the department of the proposed project and request a letter of determination. Upon the request of the department, the agency shall provide the department with information as to the number of historic properties within a proposed project area, their significance, the impact of the proposed project on the historic properties, and any proposed mitigation measures. Upon receipt of adequate information the department will provide a determination letter within ninety days. Any agency involved in the historic preservation review process shall consult and obtain the written approval of the SHPD at each step of the review. Once concurrence is received, the agency may begin the project. In cases where interim protection plans are adequately in place or data recovery fieldwork has been adequately completed, the project may also commence.

(b) The review steps, to be described in greater detail in the following sections, are as follows:

- (1) Identification and inventory, to determine if historic properties are present in the project's area and, if so, to identify and document (inventory) them;
- (2) Evaluation of significance;
- (3) Effect (impact) determination;
- (4) Mitigation commitments, committing to acceptable forms of mitigation in order to properly handle or minimize impacts to significant properties;

- (5) Detailed mitigation plan, scope of work to properly carry-out the general mitigation commitments; and
- (6) Verification of completion of detailed mitigation plan.
- (c) Documents for review steps one through four may be, and usually are, submitted concurrently.
- (d) A receipt date will be stamped on all review documents received by the SHPD.
- (e) The SHPD shall send its written comments on each step's submittal to the agency within the amount of time specified under each section of this chapter, or by a mutually agreed upon date. Copies of SHPD written comments will also be sent to any interested persons who have expressed concerns with the project by that point in the process. If the SHPD fails to send written comments within the set time, or by a mutually agreed upon date, then the SHPD is presumed to concur with the agency's submittal.
- (f) The SHPD shall consider interested persons' comments on any submittals' acceptability in accordance with this chapter and chapters 13-276 through 13-283. Comments must be submitted in writing to the SHPD within thirty days of the SHPD's posting a notice of "no effect" determination or posting a notice of SHPD receipt of information. The SHPD shall post notice of receipt of relevant documents and of issuance of SHPD "no effect" or receipt of information at the SHPD office every Friday. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons shall contact the SHPD to obtain copies of this notice, or to find locations of documents, should they wish to review them. Any interested person submitting comments on any submittal shall be provided copies of all subsequent SHPD correspondence relating to the proposed project.
- (g) If the agency or interested persons disagree with the accuracy of the SHPD's determination and if disagreements cannot be resolved through meetings with the SHPD, an appeal may be made to the Hawai'i historic places review board within thirty days of the SHPD's determination letter. An appeal is initiated by a written request to the Hawai'i historic places review board to appeal a SHPD determination. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-3, 6E-7, 6E-8)

§13-275-4 Fees. Each agency request for determination shall be accompanied by a filing fee of \$25. All fees shall be in the form of cash, certified or cashier's check, and payable to the Hawaii historic preservation special fund. [Eff:] (Auth: HRS §6E-3)
(Imp: HRS § 6E-3)

§13-275-5 Identification and inventory of historic properties. (a) The agency shall be responsible for determining whether historic properties are present in the project area and, if so, to properly identify and inventory the properties.

(b) An agency shall first consult the SHPD to determine if the area proposed for the project needs to undergo an inventory survey to determine if historic properties are present. The tax map key for the parcel(s) involved and a map shall be submitted to the SHPD to locate and define the boundaries of the project area. The SHPD shall supply a response in writing within thirty days of the receipt of the initiating request at the SHPD office. This response shall include a justification by the SHPD for its conclusion.

- (1) If the SHPD concludes that no significant historic sites are likely to be present due to past land disturbances (e.g., bulldozing; intensive cultivation for sugar cane, pineapple, or similar crops; chain dragging of land for cattle pastures; recent urbanization; recent lava flows) or other reasons, then the SHPD will make this determination in the form of a "no effect" letter within thirty days of receipt of the request; or
- (2) Alternatively, the agency can submit documents claiming no significant historic sites are likely to be present. The document must present supportive evidence documenting the land altering activities (including areal extent and depth of disturbances) and documenting the likely nature and depth of historic properties that may have once existed in the area. The SHPD shall respond in writing within thirty days of receipt of the request.
 - (A) If the SHPD agrees that no significant historic properties are present, then the SHPD shall issue a written concurrence to the agency in the form of a "no effect" determination and historic preservation review ends; or
 - (B) If the SHPD does not find the documentation satisfactory, then a letter shall be sent to the agency specifying why. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed, and resubmit the documentation or shall conduct an inventory survey, whichever is required.
- (3) The SHPD will make all "no effect" determinations available to interested persons by posting notice of all such determinations at the SHPD office every Friday. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working

day. Interested persons have the opportunity to submit written comments on such determinations within thirty days of the notice's posting. Should historic properties be reported to the SHPD during these thirty days the SHPD will reconsider its concurrence under the provisions of section 13-275-11.

- (4) If the SHPD determines that an adequate survey exists and that historic properties are present, then the agency shall proceed to the next step in the review process, evaluation of the significance of the historic properties according to section 13-275-6.
- (5) If the SHPD concludes an inventory survey needs to be done, this survey shall identify all historic properties and gather enough information to evaluate the properties' significance. Inventory surveys fall into three main categories, and the SHPD will indicate which category or combination of categories is needed.
 - (A) An archaeological inventory survey is undertaken when the SHPD concludes that archaeological properties are present or are likely to be present. Archaeological survey often involves detailed field mapping and test excavations, laboratory analyses, and interpretive studies. Specific minimal requirements for this survey are contained in chapter 13-276. An archaeological permit, issued by the SHPD, is required for this survey and any lesser level of archaeological survey work, as set forth in chapter 13-282. The survey must be directed by a qualified archaeologist who meets the qualifications set forth in chapter 13-281.
 - (B) An ethnographic survey is undertaken when the SHPD concludes that traditional cultural properties are present or are likely to be present within the project area and when the project area is known to have been used by members of an ethnic community at least fifty years ago or by preceding generations. Guidelines for this survey can be obtained from the SHPD. The survey must be directed by a qualified ethnographer who meets the qualifications set forth in chapter 13-281.
 - (C) An architectural inventory survey is undertaken when the SHPD concludes that historic buildings, structures, objects, or districts are present or are likely to be present within the project area. Minimally, information shall be of sufficient quality to complete a National

Register of Historic Places nomination form. The survey must be directed by a qualified historian, architect or architectural historian who meets the qualifications set forth in chapter 13-281.

(c) If an inventory survey is needed, once it is completed, one copy of the inventory survey report shall be submitted to the SHPD for review. If the report is an archaeological report, upon the request of the SHPD the agency shall submit another copy to an authorized review archaeologist, who shall provide the SHPD with comments as to whether the report meets the minimum standards enumerated in chapter 13-276, and specifically discuss any inadequacies. The report shall meet the requirements noted in chapter 13-276 for archaeology; shall conform with the SHPD guidelines for ethnography; or shall meet the requirements to complete a National Register of Historic Places nomination form(s) for architecture. When consultation is required, as specified in any of the reporting rules or guidelines for surveys, the report will include a summary of the consultation. The SHPD shall inform the agency within fifteen days of receipt of an authorized archaeologist's comments or forty five days of receipt of the report, whichever is longer, if the information contained in the report is adequate or inadequate.

- (1) Any interested persons may comment on the survey report. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the report. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD shall reconsider its determination under the provisions of section 13-275-11.
- (2) If the SHPD determines that the survey or report is inadequate (e.g., survey failed to cover the entire project area, historic properties are incompletely described, etc.), then a letter shall be sent to the agency stating why the inventory survey is inadequate. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the results.
- (3) If the SHPD finds the report adequate, then the agency will be sent a written notice of acceptance. Once the survey report is accepted, six copies of the report shall be provided to the following repositories: two copies shall be sent to the SHPD library with one copy going to the relevant SHPD neighbor island office's library, one copy shall be sent to the University of Hawaii at Manoa Hamilton Library Pacific Collection, one copy shall be sent to the Bishop Museum library, one copy shall be

sent to the University of Hawaii at Hilo library, and one copy shall be sent to the local public library nearest to the project area.

(d) If the SHPD gives the report final acceptance and if no historic properties are present, then historic preservation review ends and the SHPD shall include in the notice of final acceptance its written concurrence to the project in the form of a "no effect" determination.

(e) If the SHPD finds the report adequate and historic properties are present, then the significance of each property shall be evaluated as discussed in the following section. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-6 Evaluation of significance. (a) Once a historic property is identified, then an assessment of significance shall occur. The agency shall make this assessment or delegate this assessment, in writing, to the SHPD or the authorized review archaeologist. This information is usually submitted concurrently with the survey report, if historic properties were found in the survey.

(b) To be significant, a historic property shall possess integrity of location, design, setting, materials, workmanship, feeling, and association and shall meet one or more of the following criterion:

- (1) Criterion "a". Be associated with events that have made an important contribution to the broad patterns of our history;
- (2) Criterion "b". Be associated with the lives of persons important in our past;
- (3) Criterion "c". Embody the distinctive characteristics of a type, period, or method of construction; represent the work of a master; or possess high artistic value;
- (4) Criterion "d". Have yielded, or is likely to yield, information important for research on prehistory or history; or
- (5) Criterion "e". Have an important value to the native Hawaiian people or to another ethnic group of the State due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

A group of sites can be collectively argued to be significant under any of the criteria.

(c) Prior to submission of significance evaluations for properties other than architectural properties, the agency shall consult with one or more of the

following to seek their views on the significance evaluations, particularly to fully evaluate the possibility of properties of cultural significance being present:

- (1) Members of an ethnic group who may have knowledge of traditional cultural properties in a project area;
- (2) Individuals knowledgeable of the history of the project area; or
- (3) Ethnic organizations, such as native Hawaiian organizations, for whom some of the historic properties may have cultural significance under criterion "e".

(d) Significance assessments shall be submitted to the SHPD for review. For archaeological properties, upon the request of the SHPD the agency shall submit the significance assessments to an authorized review archaeologist, who shall provide SHPD with comments evaluating the significance assessments and specifically addressing any questionable assessments. The concurrence of the SHPD is required before significance is finalized. The SHPD shall agree or disagree with the significance evaluations within fifteen days of receipt of the authorized review archaeologist's comments or within forty five days of receipt of the significance evaluations, whichever is longer.

- (1) The assessment shall:
 - (A) Present a table which lists each historic property and identifies all applicable criteria of significance for each property; and
 - (B) Provide justification for classifying the property within these criteria, it being allowable to make this justification general for similar types of archaeological sites. Supportive documentation shall be cited (such as inventory survey reports);
 - (C) If an inventory survey has been done to assist these evaluations and if this information is not already on file, five copies of the archaeological inventory survey report (meeting minimal report standards, see chapter 13-276 for archaeology), the ethnographic survey (meeting SHPD report guidelines), or of the architectural National Register Nomination forms shall be submitted to the SHPD; and
 - (D) Evidence of any consultation shall be submitted with the assessment, to include:
 - (i) A description of the consultation process used;
 - (ii) A list of the individuals or organizations contacted; and
 - (iii) A summary of the views and concerns expressed.

- (2) Any interested persons may comment on the proposed significance evaluations. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the significance evaluation. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD shall reconsider its determination under the provisions of section 13-275-11.
- (3) If the SHPD disagrees with the initial significance assessments or if it believes more information is needed to evaluate the significance of a historic property, a letter shall be sent to the agency presenting the SHPD's findings. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the initial significance assessments.
- (4) If the SHPD agrees with the initial significance assessments, a letter of agreement shall be sent to the agency. Once agreement is reached on significance of the properties, the SHPD shall enter all significance assessments in the Hawaii inventory of historic places, as consensus determinations.

(e) If there is an agreement that none of the historic properties are significant, then historic preservation review ends and SHPD shall issue its written concurrence to the project in the form of a "no effect" determination. When significant historic properties are present, then impacts of the proposed action on these properties shall be assessed, and mitigation commitments shall be devised as needed. [Eff: _____] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-7 Determining effects to significant historic properties. (a)

The effects or impacts of a project on significant properties shall be determined by the agency. Effects include direct as well as indirect impacts. One of the following effect determinations must be established:

- (1) "No effect". The project will have no effect on significant historic properties; or
- (2) "Effect, with agreed upon mitigation commitments". The project will affect one or more significant historic properties, and the effects will be potentially harmful. However, the agency has agreed to mitigation commitments involving one or more forms

of mitigation to reasonably and acceptably mitigate the harmful effects.

(b) Effects include, but are not limited to, partial or total destruction or alteration of the historic property, detrimental alteration of the properties' surrounding environment, detrimental visual, spatial, noise or atmospheric impingement, increasing access with the chances of resulting damage, and neglect resulting in deterioration or destruction. These effects are potentially harmful.

(c) Effect determinations shall be submitted to SHPD for review and approval. Usually these are submitted concurrently with the survey report, significance assessments, and mitigation commitments. The determinations shall include a map showing the location of the project and a general discussion of the project's scope of work, so the nature of possible effects can be understood. For projects involving archaeological properties, upon the request of the SHPD the agency shall submit their effect determinations to an authorized review archaeologist, who shall provide SHPD with comments evaluating the effect determinations, and specifically assessing any questionable determinations.

- (1) Any interested person may comment on the effect determinations. Comments must be submitted to the SHPD within thirty days of the SHPD posting notice of the receipt of the effect determinations. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD shall reconsider its determination under the provisions of section 13-275-11.
- (2) If the SHPD disagrees with the effects determinations, a letter that specifies the disagreements shall be sent within fifteen days of SHPD receipt of the authorized review archaeologist's comments or within forty five days of receipt of the effect determinations, whichever is longer. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the effect determinations.
- (3) If the SHPD agrees with the effect determinations, the SHPD shall send a letter of agreement within fifteen days of SHPD receipt of the authorized review archaeologist's comments or within forty five days of receipt of the effect determinations, whichever is longer.

(d) No effect determinations for architectural properties shall be expedited when the SHPD agrees with the agency that minor changes to a building or structure will not affect its significant character. Because these

changes are typically non-controversial and require prompt processing, the SHPD shall write its concurrence as a "no effect" determination.

- (1) The SHPD shall post notifications of any such "no effect" determinations at the SHPD office every Friday. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons have the opportunity to comment on such determinations within thirty days. At the end of thirty days if objections to the minor changes to the properties are submitted, the SHPD will reconsider its findings under the provisions of section 13-275-11.

(e) When the SHPD agrees that the action will have "no effect" on significant historic properties, this is the SHPD's written concurrence and historic preservation review ends. When SHPD agrees that the project will have an "effect, with agreed upon mitigation commitments", then mitigation commitments and detailed mitigation plans shall be developed by the agency and approved by SHPD, as discussed in section 13-125-7.

[Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-8 Mitigation. (a) If a project will have an "effect" (impact) on significant historic properties, then a mitigation commitment proposing the form of mitigation to be undertaken for each significant historic property shall be submitted by the agency to the SHPD for review and approval. For projects affecting archaeological properties, upon the request of the SHPD the agency shall submit the mitigation determinations to an authorized review archaeologist, who shall provide SHPD with comments discussing the mitigation commitments, and specifically addressing any questionable proposals. Usually this proposed commitment is submitted concurrently with the survey report, significance evaluations, and effects determinations, if significant historic properties are present in the project area and will be affected.

- (1) Mitigation can occur in five forms.
 - (A) Preservation, which may include avoidance and protection (conservation), stabilization, rehabilitation, restoration, reconstruction, exhibition with interpretation of significance, or traditional cultural activity. Not all of these preservation elements are mutually compatible.
 - (B) Architectural recordation, which involves the photographic documentation and possibly the measured

drawing of a building, structure or object prior to its destruction.

- (C) Archaeological data recovery, which enables the recovery of an adequate and reasonable amount of the significant information from a significant historic property prior to its destruction. Data recovery may include archaeological mapping, surface collection, excavation, laboratory analyses, and interpretive analyses.
- (D) Historical data recovery, which involves researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be destroyed.
- (E) Ethnographic documentation, which involves interviewing knowledgeable individuals and researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be destroyed.

- (2) If properties with cultural significance, so evaluated under criterion "e", as defined in section 13-275-6(b)(5), are involved, the agency shall consult with one or both of the following on the proposed form(s) of mitigation, so their concerns can be considered:

- (A) Ethnic organizations, such as native Hawaiian organizations, for whom the historic properties are of cultural significance; or
- (B) In the case of a traditional cultural place, members of the ethnic community who have knowledge of the traditional cultural property.

- (3) The proposed mitigation commitment must include:

- (A) A table of the significant historic properties, indicating which form or forms of mitigation is proposed for each property -- preservation, archaeological data recovery, architectural documentation, historical documentation, or ethnographic documentation;
- (B) Brief text justifying these proposed treatments. Similar sites can be discussed together in this justification; and
- (C) If culturally significant properties are involved, a description of the consultation process used, a list of the individuals and organizations contacted, and a summary of the views and concerns expressed.

(b) If the proposal is not acceptable, SHPD shall send a letter outlining needed changes, within fifteen days of receipt of the authorized review

archaeologist's comments or within forty five days of receipt of the mitigation commitments, whichever is longer. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the mitigation commitments.

(c) If the commitments are acceptable, the SHPD shall send a determination letter concurring with the proposed project within fifteen days of receipt of the authorized review archaeologist's comments or within forty five days of receipt of the mitigation commitments, whichever is longer. Any interested persons may comment on the proposed mitigation commitments. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of receipt of the proposed mitigation commitments. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD shall reconsider its determination under the provisions of section 13-275-11.

(d) If identified unmarked burial sites are present, the relevant island burial council of the department must approve the proposed mitigation commitments for native Hawaiian burials, following section 6E-43, HRS, and section 13-300-33.

(e) Should either the agency or any interested person disagree with the SHPD's determination letter, the disagreeing party shall within thirty days of the determination letter submit in writing a request for the Hawaii historic places review board to hold a non-judicial appeal hearing in accordance with chapter 91. The intent of the appeal hearing is to provide an informal fact-finding process, characterized by great latitude, in which all parties have ample opportunity to present information to the Hawaii historic places review board for consideration, and answer any questions the review board may have. The request for an appeal hearing shall include:

- (1) A statement indicating which step in the process the appellant believes is in error;
- (2) Information to support the appellant's position; and
- (3) Any other information, including legal memoranda, the appellant may wish the review board to read prior to the hearing.

(f) The review board shall schedule an appeal hearing to be held within thirty days of receipt of the appeal request. The hearing process will proceed in the following manner:

- (1) The review board shall receive testimony from the SHPD on the basis of its written concurrence;
- (2) The appellant will present its basis for appealing the SHPD concurrence;

- (3) Thereafter, the review board will hear and receive testimony from any other interested persons or agencies;
- (4) The review board may ask questions of those testifying before it; and
- (5) Once the review board has reviewed all the written and oral testimony, it will render a decision regarding the appeal within fifteen days of the conclusion of the hearing.

(g) Should either the agency or any interested person be dissatisfied with the decision of the review board, they may within thirty days of the review board decision apply to the governor to take action as the governor deems best in overruling or sustaining the department.

(h) After mitigation commitments are accepted by SHPD, the agency shall provide detailed plans for the mitigation work for SHPD review and approval. For projects involving archaeological properties, upon the request of the SHPD the agency shall submit a copy of the plans to an authorized review archaeologist, who will provide SHPD with comments as to whether the detailed mitigation plans meet the minimum standards, and specifically discuss any inadequacies. The approved plans shall serve as scopes of work for mitigation.

- (1) Archaeological data recovery plans shall meet the minimal standards for data recovery as provided in chapter 13-277. Qualifications of the archaeologist directing this work shall comply with chapter 13-281. An archaeological permit from the SHPD is required to undertake this work, as provided in chapter 13-282. Plans may include monitoring of construction by a professional archaeologist where further significant historic remains are likely to be found after data recovery. Minimal standards for the monitoring and report shall comply with chapter 13-279. Qualifications of the archaeologist directing the monitoring shall comply with chapter 13-281.
- (2) Architectural recordation plans shall meet the minimal standards as provided by historic American building survey (HABS) photographic specifications. Qualifications for the historian, architect, or architectural historian directing this work shall comply with chapter 13-281.
- (3) Historical data recovery plans shall conform with SHPD guidelines for historic documentation. Qualifications for the historian directing this work shall comply with chapter 13-281.
- (4) Ethnographic documentation plans shall conform with SHPD guidelines for ethnographic documentation. Qualifications for the ethnographer directing this work shall comply with chapter 13-281.

- (5) Preservation plans shall meet the minimal standards as provided by chapter 13-278 for archaeological properties and traditional cultural properties and the Secretary of the Interior's standards for historic preservation projects for architectural properties.
 - (A) If preservation plans involve historic properties of cultural significance, the agency shall consult with interested members of the relevant cultural group with which the properties are associated, such as Hawaiian organizations and individuals for any such native Hawaiian properties. The plans shall describe the consultation process used, list the individuals and organizations consulted, and summarize the views and concerns expressed.
- (6) Any interested persons may comment on the detailed mitigation plans. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the detailed mitigation plans. The SHPD shall take all comments into consideration when issuing its letter of acceptance or non-acceptance of the plans.
- (7) If a detailed mitigation plan is not acceptable, SHPD shall send a letter outlining needed changes, within fifteen days of receipt of the authorized review archaeologist's comments or within forty five days of receipt of the plan, whichever is longer. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the plan.
- (8) If the detailed mitigation plans are acceptable, the SHPD shall send a letter of agreement within fifteen days of receipt of the authorized review archaeologist's comments or within forty five days of receipt of the plans, whichever is longer. Once a plan is accepted, work can then proceed on the plan.
- (9) If unmarked burials are involved, the detailed mitigation plan must be covered under a burial treatment plan, as specified in chapter 13-300. This treatment plan can serve as the burial site component of an archaeological data recovery plan (in cases of disinterment and reinterment elsewhere) or of a preservation plan. [Eff: _____] (Auth: HRS §§6E-3, 6E-5.5, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-5.5, 6E-7, 6E-8)

§13-275-9 Verification of completion of the detailed mitigation plan.

(a) Once the detailed mitigation plans are carried out, a request for verification shall be submitted by the agency to the SHPD. This request shall document completion of the detailed mitigation plan's tasks -- usually in the form of a completion report, with one copy submitted. Projects involving archaeological data recovery reports shall submit one copy of the report to an authorized review archaeologist, who shall provide SHPD with comments as to whether the report meets the minimum standards, and to specifically address any inadequacies.

(b) If the SHPD disagrees that the work has been successfully completed, it shall send a letter noting uncompleted tasks or inadequately completed tasks within thirty days of receipt of the request. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the completion report.

(c) If the SHPD agrees that the work has been successfully concluded, SHPD shall send a verification letter within thirty days and the historic preservation process is concluded.

(d) In cases involving preservation, archaeological data recovery, or architectural recordation, the agency has the option to request an accelerated, two step verification, understanding that construction projects often need to proceed rapidly and that a completion report is often finished months after fieldwork is completed.

(1) Step 1. The agency shall submit documentation to the SHPD indicating that data recovery fieldwork, architectural recordation, or interim protection measures for properties to be preserved have been successfully completed. The SHPD writes a letter within thirty days to the agency agreeing and stating construction may proceed, with the understanding that Step 2 must be completed to conclude the historic preservation process. If the measures have not been successfully completed, the SHPD shall write a letter within thirty days to the agency indicating what needs to be completed. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the documentation.

(2) Step 2. The agency shall submit to the SHPD a completion report for the data recovery work, architectural recordation, or final preservation work. The SHPD shall write a letter to the agency within thirty days stating the completion report is acceptable and that the historic preservation process is concluded. If the completion report is not acceptable, the SHPD shall write a letter within thirty days to the agency

indicating needed changes. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the completion report.

(e) In cases involving solely historic data recovery or ethnographic documentation where no field study of the historic property(ies) is to occur, the agency has the option to request an accelerated verification process to proceed with the construction project and to submit a completion report at a later date, agreed upon with the SHPD. The agency shall submit the request in writing to the SHPD with reasons and with a date for submittal of the completion report. If the SHPD agrees, it shall send a letter to the agency within thirty days stating construction may proceed, with the agreement that the report shall be submitted to the SHPD by the agreed upon date and shall then be reviewed in accordance with section 13-275-9(a) through (c). If the SHPD does not agree with the request, the SHPD shall write a letter within thirty days to the agency indicating the SHPD's concerns. If the agency wishes to proceed with the accelerated verification process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the request.

(f) Once a final report is accepted, the agency shall ensure that six copies are made available to the same repositories as the survey reports as noted in section 13-275-5(c)(3). [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-10 Conclusion of the historic preservation review process.

The historic preservation review process ends when:

- (1) The SHPD agrees that adequate procedures have been taken to determine if historic properties are likely to be present in the project area, and no historic properties are found to be present or historic properties are considered unlikely to be present;
- (2) The SHPD agrees that no significant historic properties are present; or
- (3) The SHPD agrees that the project shall have "no effect" on significant historic properties that are present;
- (4) The SHPD agrees to a detailed mitigation plan to handle an effect to significant historic properties that are present and this plan is verified by the SHPD to have been successfully executed. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-11 Reconsideration of findings after the process is closed.

(a) The SHPD shall reconsider the findings under sections 13-275-5 (adequate identification and inventory procedures), 13-275-6 (significance evaluations), 13-275-7 (determination of effects), and 13-275-8 (mitigation), when new information is submitted by an interested party with a request for reconsideration. To be considered, the inquiry must address a specific problem in the findings with supportive new evidence presented. The agency conducting the project shall be promptly notified by the SHPD of the request for reconsideration. An inquiry to the SHPD will not suspend action on a project, but the agency shall take all measures to avoid adverse effects to significant historic properties while the SHPD is reviewing a request. Within ten working days of receipt of the request at the SHPD office, the SHPD shall advise in writing the interested party and the agency undertaking the project of the SHPD conclusions.

(b) If the SHPD uncovers new information changing its findings, the SHPD shall advise the agency undertaking the projects of the SHPD conclusions.

(c) If interested persons disagree with the SHPD' conclusions in section 275-11(a) or (b) they may appeal the conclusion to the Hawaii historic places review board, if meetings with the SHPD do not resolve differences. The appeal shall not suspend action on a project, but the agency conducting the project shall take all measures to avoid adverse effects to historic properties during the appeal process.

(d) If the SHPD conclusions identify a previously unknown historic property, then the expedited review process in section 13-275-12 and chapter 13-280 shall be followed.

(e) If the SHPD conclusions identify an inaccurate significance evaluation, an inappropriate general mitigation commitment, or a flaw in the detailed mitigation plan, then the SHPD and the agency undertaking the project shall attempt to reach agreement on how to correct the problem. If agreement cannot be reached within ten working days, the Hawaii historic places review board shall be asked for their advice. The review board shall provide their advice within thirty days after receiving a request.

[Eff: _____] (Auth: HRS §§6E-3, 6E-5.5, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-5.5, 6E-7, 6E-8)

§13-275-12 Discovery of previously unknown historic properties during implementation of a project. If a previously unknown historic property is found during the implementation of a project, then the historic preservation review process is reopened. This action, however, applies only to the

immediate area where a historic property is discovered, and the historic preservation review process is accelerated, following the procedures of chapter 13-280. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-13 Emergency projects. (a) When an agency proposes an emergency project as an essential and immediate response to an imminent threat to public health, safety or welfare as a result of natural disaster or state of emergency as provided by law, the agency shall consult with the SHPD to attempt to develop consensus plans to take into account the effect of the project on significant historic properties. This consensus shall be reached within three working days. If consensus is not reached, appeal to the governor for an immediate decision shall occur.

(b) This section does not apply to projects that will not be implemented within thirty days after the disaster or emergency. Such projects shall be reviewed in accordance with the normal historic preservation review process. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8, 6E-11) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-14 Penalty. Any violation of this chapter may result in denial or revocation of the SHPD's written concurrence or agreement. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8, 6E-11) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 276

RULES GOVERNING STANDARDS FOR ARCHAEOLOGICAL INVENTORY

SURVEYS AND REPORTS

§13-276-1	Policy and purpose
§13-276-2	Definitions
§13-276-3	Archaeological inventory survey, generally
§13-276-4	Archaeological field survey
§13-276-5	Archaeological inventory survey report
§13-276-6	Site marking
§13-276-7	Final disposition of collections
§13-276-8	Significance assessments
§13-276-9	Penalty

Draft 10/15/98

§13-276-1 Policy and purpose. This chapter establishes standards for archaeological inventory surveys and reports required by chapters 13-275 and 13-284 for the historic preservation review process. [Eff:]
(Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8; §§13-275, 13-284) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-276-2 Definitions. As used in this chapter unless the context requires otherwise:

"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in a delineated area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Cultural significance" means a historic property is of value to an ethnic group in the State due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic preservation review process" means the process specified in chapters 13-275 and 13-284, used to comply with sections 6E-7, 6E-8 and 6E-42, HRS.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff:] (Auth: HRS §§6E-2, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-276-3 Archaeological inventory survey, generally. An archeological inventory survey shall:

- (1) Determine if archaeological historic properties are present in the project area and, if so, identify all such historic properties.
- (2) Gather sufficient information to evaluate each historic property's significance in accordance with the significance criteria listed in section 13-275-6(b). [Eff:] (Auth: HRS §§6E-3, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-276-4 Archaeological field survey. (a) Portions of the project area that have no adequate inventory survey reports prepared for them shall undergo archaeological inventory survey to determine whether archaeological historic properties are present and, if so, to establish their nature and locations.

(b) Sand dunes, urban fill and other areas which have no visible historic properties, shall be evaluated to determine whether subsurface historic properties are present. This evaluation shall include findings of test excavations or a conclusion, with supportive documentation, that historic properties are not anticipated to be present.

(c) Historic properties, or features of properties, that have several possible alternative functions based on surface examination shall be test excavated to provide additional information that might help to resolve the question of property or feature function. Recordation of such excavations and any necessary laboratory analysis of recovered materials shall be

undertaken as part of the archaeological inventory survey. If human skeletal remains are found, they shall not be disturbed, excavations shall be backfilled, and SHPD notified. Archaeological historic properties, or features of properties, that are highly probable to be burials based on surface examination shall not undergo test excavation. [Eff:]
(Auth: HRS §§6E-3, 6E-7, 6E-8; §§13-275, 13-284) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-276-5 Archaeological inventory survey report. (a) An archaeological inventory survey report shall be prepared to record and synthesize the data gathered from background research, field survey and consultation process with knowledgeable individuals. The report shall include:

- (1) Identification of the survey area:
 - (A) On a 1:24000 scale United States Geological Survey quadrangle map, or on a portion or an enlargement of a portion of this map; and
 - (B) In the text, stating the island, district and ahupua`a of the area and the tax map key (TMK) and acreage of the parcel.
- (2) Identification of the owner(s) of the parcel; and
- (3) A description of the parcel's environment, to include:
 - (A) Topographic data (including general elevations, distance inland, and general terrain patterns);
 - (B) Vegetation data;
 - (C) Soil data; and
 - (D) Rainfall information.

(b) The report shall contain a section on historic background research which shall be used to predict the kinds and distributions of historic properties that might still be present and to provide a context for understanding and evaluating the significance of any historic properties that are found. The historic background section of the report shall:

- (1) Present findings on land use and site patterns for the ahupua`a and parcel for:
 - (A) Prehistoric and early historic times, as revealed by any eighteenth or nineteenth century literature on Hawaii;
 - (B) 1848-1851 times, as indicated by LCA awards; and
 - (C) Post-1850 times as revealed in later literature or through oral history.

- (2) Provide a summary of documents and materials reviewed during the research; and
- (3) Indicate:
 - (A) Whether any land commission awards were granted within the parcel and within the ahupua`a in which the parcel is located; and
 - (B) If awards were granted, specify the number of these awards, their LCA number, the use of each plot or apana awarded, and locate the awards on a map.

(c) The report shall contain a section on archaeological background research which shall include a review of whether any prior archaeological studies have occurred in the parcel and in the ahupua`a in which the parcel is located. At a minimum, the SHPD library shall be consulted for prior studies. If no studies exist, the archaeological inventory survey report shall so state this fact. If studies exist, the findings shall be reviewed. This review shall include:

- (1) A list of these studies, with report references;
- (2) The areal extent of the survey coverage indicated on a map;
- (3) Whether the prior studies were accepted by the SHPD as adequate inventory surveys;
- (4) A summary of the functional types of archaeological sites found (if any), and their numbers and distributions;
- (5) Dating (if any has been done); and
- (6) A summary of past land use patterns for the ahupua`a and project area, reconciling as needed those patterns identified in the historical background section of the report with the existing archaeological information. Alternatively, just one summary for both the historical and archaeological background research can be presented.

(d) The report shall contain a section on survey methods used in the archaeological field survey which shall include:

- (1) The number of field personnel, with the names and degrees of the principal investigator and field director;
- (2) When the survey was performed and the duration of time for the survey;
- (3) The extent of survey coverage. If the coverage was less than one hundred percent, the rationale for the sample (the sampling design) must be presented in a careful discussion. Sampling designs which included analysis of possible subsurface sites under sand dunes, urban fill, and other areas must also be presented here.

- (4) The techniques used to identify archaeological sites (transects, sweeps, test excavations, augering, etc.);
 - (5) The extent of historic property recording (mapping, measuring, photographing, test excavations) and the techniques used, with the rationale for these techniques given; and
 - (6) The method used to plot site location.
- (e) The report shall contain a section on its archaeological field survey findings. Each archaeological site found shall be individually described as follows:
- (1) A State site number and any previous numbers;
 - (2) A reference to a previous study, if the site has been previously recorded;
 - (3) The site's formal type (e.g., C-shaped enclosure, platform, enclosure, wall, paving, etc.). If it has several major features, then each of these should be noted (e.g., 3 C-shaped enclosures, 1 platform, 4 stone cairns).
 - (4) A description of each site, to include:
 - (A) Size, horizontal extent;
 - (B) The major feature(s)'s shape, area, with representative architectural heights and widths, etc. (in metrics);
 - (C) The presence or absence of surface remains (artifacts, midden, debris, etc.), and if present, the general nature of these remains and their density and distribution;
 - (D) The presence or absence of any subsurface deposits, and if present, an assessment of the general depth and nature of the deposits. If test excavations, augering, etc. occurred, these results must be presented here and shall include stratigraphic information with:
 - (i) standard soil descriptions (with Munsell colors);
 - (ii) Line-drawn profiles, to scale, of all test excavations through surface architecture or of all test excavations with subsurface features visible in the excavation side walls; and
 - (iii) Representative line-drawn profiles, to scale, of test excavations not through surface architecture or where no subsurface features are visible in the excavation side walls.
 - (E) Photographs, illustrations, or both;
 - (F) Drafted plan map, at a minimum a sketch to scale, which shall include a bar scale, north arrow, and indicate method used (e.g., tape and pocket transit; transit,

stadia rod, and tape; tape and compass; visual estimate; etc.);

- (G) The condition of the site.
- (H) An assessment of site function, with reasonable and adequate supportive arguments, and with habitation sites minimally differentiated into permanent habitation and temporary habitation functions; and
- (I) An assessment of site age, with absolute dating results when available.

(f) The report shall document any previous land disturbances (bulldozing, grubbing by machine, sugarcane cultivation) identified during the survey.

(g) The report shall contain a summary of the findings, to include, but not be restricted to:

- (1) Total number of archaeological sites found;
- (2) A map(s) locating all the archaeological sites found and, if practical, their boundaries, with at least one site location map being a portion of the relevant United States Geological Survey standard 1:24,000 topographic map;
- (3) A table presenting the sites with their State number, formal type, and possible function listed;
- (4) If multiple archaeological sites within a major functional type (such as religious, burial, permanent habitation, and temporary habitation site types) are found, summaries of each type shall occur;
- (5) a re-evaluation of ideas on the history of land use in the ahupua`a and the parcel; and
- (6) In cases where more than five sites are present within a major functional type, the summary of the functional type shall include:
 - (A) A table which itemizes for each site and its relevant constituent structures the key variables used to determine the function (e.g., form, area); and
 - (B) A map showing the distribution of the sites within that functional type.

(h) For projects larger than thirty acres in size, the report shall contain an appendix on the consultation process with individuals knowledgeable about the project area's history. This consultation process shall occur during or immediately after the conclusion of the archaeological field survey.

- (1) This appendix shall include:
 - (A) Personnel conducting the consultation process, with names and degrees;

- (B) Knowledgeable persons consulted; and
 - (C) A summary as to whether additional archaeological historic properties were identified during the consultation process, and whether additional information on archaeological site function was obtained during the consultation process;
- (2) Should additional information on site function be obtained, that information shall be presented in the site description portion of the report.
 - (3) Consult SHPD guidelines on ethnographic surveys and reports for assistance in preparing findings from the consultation process. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-276-6 Site marker. Permanent numbered markers shall be attached to all archaeological historic properties found. Temporary field numbers may be used, but they shall be replaced by markers using official state numbers assigned by SHPD. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-276-7 Final disposition of collections. (a) All collections, excluding human remains, from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD.

(b) In the event human skeletal remains are recovered during survey, final treatment of any such remains and associated grave goods shall follow the procedures of 6E-43, H.R.S. [Eff:] (Auth: HRS §§6E-3, 6E-6, 6E-7, 6E-8, 6E-43) (Imp: HRS §§6E-1, 6E-3, 6E-6, 6E-7, 6E-8, 6E-43)

§13-276-8 Significance assessments. Significance evaluations are not part of the identification and inventory phase of historic preservation review. They can be included in the survey report, but they shall be a separate section of the report, which shall be labeled "Significance Assessments". [Eff:] (Auth: HRS §§6E-3,

6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-276-9 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a directive to the person not to proceed with project ground alteration, a denial or revocation of SHPD written concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, and applicable laws. [Eff:

] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 277

RULES GOVERNING REQUIREMENTS FOR ARCHAEOLOGICAL SITE

PRESERVATION AND DEVELOPMENT

§13-277-1	Policy and purpose
§13-277-2	Definitions
§13-277-3	Preservation plan
§13-277-4	Buffer zones
§13-277-5	Short-term protection measures
§13-277-6	Long term preservation measures
§13-277-7	Exhibition requirements
§13-277-8	Penalty

Draft 10/15/98

§13-277-1 Policy and purpose. This chapter provides standards for preservation approaches to ensure proper preservation and a "no adverse effect" in the public's interest. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-277-2 Definitions. As used in this chapter unless the context requires otherwise:

"Agency" means any state or county governmental entity.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Cultural significance" means a historic property is of value to an ethnic group in the State due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic data recovery, historic data recovery, and architectural recordation.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or a criterion of traditional cultural significance.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff: _____] (Auth: HRS §§ 6E-2, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§ 6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-277-3 Preservation plan. A preservation plan prepared pursuant to chapter 13-275 or 13-284, shall:

- (1) Identify for each significant historic property whether preservation will take the form of avoidance and protection (conservation) or exhibition (interpretation);
- (2) Specify the buffer zones around each significant historic property;
- (3) Specify short-term protection measures for each significant historic property that will be within or near a construction area;
- (4) Discuss the agency or person's consultation process, for properties with traditional cultural significance. The agency or person shall consult with ethnic organizations and individuals for whom the historic properties are of cultural significance. The thoughts on preservation treatment expressed by these individuals or organizations shall be considered when preparing the preservation plan. The plan shall include a list of individuals and organizations contacted, and shall summarize their input.
- (5) Specify the long term preservation measures to be undertaken at each significant historic property. This may be done with drawings or text, or both. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-277-4 Buffer zones. (a) Buffer zones shall ensure that the integrity and context of setting around the historic property is preserved, in many cases including the visual integrity.

(b) The size of buffer zones needs to be determined by the person or agency and the SHPD on a site-by-site basis. Size will vary with the local terrain, eventual use of the site, surrounding land uses, the type of site, and

the criterion for which a site is significant. For example, a site significant solely for its information content may have a much smaller buffer zone than a site significant as an excellent example of a site type, or a heiau may have a much larger buffer zone than a house site.

(c) Buffer zones shall be marked on overall project maps, and physical markers shall be placed in the ground delineating the buffers.

[Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8; 6E-42)
(Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-277-5 Short-term protection measures. These measures shall protect the significant historic property and its buffer zone during construction activities. They may include:

- (1) Flagging the perimeter of the buffer zone;
- (2) Erecting barriers (such as plastic fencing) along the buffer zone;
- (3) Placing avoidance instructions on construction specifications;
- (4) On-site briefing of the hired construction firm; and
- (5) Having an archaeologist on-site during ground alteration activities. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-277-6 Long term preservation measures. Long term preservation measures shall follow the appropriate Secretary of the Interior's Standards for Historic Preservation Projects. The preservation plan shall address the following long term preservation measures:

- (1) Maintenance measures to be followed;
- (2) Methods for clearing vegetation;
- (3) The manner in which litter is handled;
- (4) Access to the site and possible use of the site for cultural practices, if appropriate; and
- (5) Approaches to interpret and inform the public about the site. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-277-7 Exhibition requirements. (a) When using interpretive text for signs, brochures, etc., the text shall be reviewed and approved by SHPD to insure historical accuracy based upon current knowledge.

(b) Interpretive signs shall be:

- (1) Of sufficient quality to enhance interpretation;
- (2) Culturally sensitive; and
- (3) Located so as not to adversely affect the site visually.

(c) Archaeological research to improve the interpretation of the site may be undertaken, and shall meet the standards set forth in chapter 13-278. [Eff:] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)
(Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-277-8 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a directive to the person not to proceed with construction in the project area, shall result in a denial or revocation of SHPD's written concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, SHPD rules chapters 13-275, 13-278, 13-281, 13-282, 13-284 and applicable laws. [Eff:]
(Auth: HRS §§6E-3, 6E-8, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-8, 6E-42)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 278

RULES GOVERNING STANDARDS FOR ARCHAEOLOGICAL DATA

RECOVERY STUDIES AND REPORTS

§13-278-1	Policy and purpose
§13-278-2	Definitions
§13-278-3	Preparation of a data recovery plan
§13-278-4	Archaeological data recovery report
§13-278-5	Final disposition of collections
§13-278-6	Penalty

Draft 10/15/98

§13-278-1 Policy and purpose. This chapter establishes uniform standards for archaeological data recovery studies and reports, to improve the overall quality of mitigation measures and to better protect the public's interests. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-278-2 Definitions. As used in this chapter unless the context requires otherwise:

"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Cultural significance" means a historic property is of value to an ethnic group in the State due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic data recovery, historic data recovery, and architectural recordation.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license,

certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or a criterion of traditional cultural significance.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff: _____] (Auth: HRS §§6E-2, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§ 6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-278-3 Preparation of a data recovery plan. (a) A specific archaeological data recovery plan (research design) shall be prepared by an archaeologist who meets the minimum requirements under chapter 13-281 prior to the start of archaeological data recovery. This plan shall:

- (1) Identify historic properties to be studied;
- (2) Identify research questions to be addressed. This shall be done by reviewing prior archaeological and historical work in the parcel, ahupua`a and wider region. The specifics of these questions will vary with the extent of prior work;
- (3) Identify specific data needed to address the questions;
- (4) Identify methods to be used to acquire and analyze the data. Any sampling approaches to be used shall be noted here. The plan shall also use the most efficient methods to try to answer the research questions;
- (5) Identify any necessary laboratory work. This work may include, but not be limited to, dating, faunal analyses, soil analyses, botanical analyses, and artifact analyses. If osteological analysis of human skeletal remains is to be undertaken it shall conform with chapters 13-300 and 13-283;
- (6) Identify a procedure for depositing collections after conclusion of the data recovery project; and
- (7) If burials are to be disinterred, a written data recovery plan is not required for inadvertent discoveries. For burials the procedures of section 6E-43, HRS, and chapter 13-300 shall be followed.

(b) If properties with cultural significance are involved, the archaeologist shall consult with members of the relevant cultural group and

consider any comments when preparing this plan. The plan shall describe the consultation process, list the consulted individuals and organizations, and summarize their comments. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42, 6E-43) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-278-4 Archaeological data recovery report. (a) The archaeological data recovery report shall include the following:

- (1) An abstract that identifies:
 - (A) The sites studied; and
 - (B) General findings relevant to research questions;
- (2) Introduction, including the reasons for the project and the location of the study area. This shall include:
 - (A) A portion of the relevant U.S.G.S. standard 1:24,000 topographic map showing the ahupua`a, the parcel, and the sites studied; and
 - (B) Text, which specifies the island, district, ahupua`a and the tax map key (TMK) of the parcel
- (3) The research problems. The research problems, test implications, and information needed to address the questions shall be discussed in this part of the report.
- (4) Archaeological field methods, identifying:
 - (A) Number of personnel, with the names and degrees of the principal investigator and field director;
 - (B) When the work was done; and
 - (C) Methods planned in the data recovery plan and any deviations, to include sampling strategies and specifics on techniques used.
- (5) Archaeological fieldwork findings;
- (6) Laboratory analyses;
- (7) Historical and oral historical findings, if covered in the data recovery plan and if not reported elsewhere;
- (8) Findings on the research problems;
- (9) References; and
- (10) Location of depository (archive) for collections, photographs and written site records and maps (May be presented in an appendix.)

(b) In the archaeological fieldwork findings section of the report, each site studied shall be individually described, to include:

- (1) State site number and any previous numbers;

- (2) Reference to a previous study, if the site has been recorded before;
- (3) The site's formal type (e.g. C-shaped enclosure, platform, enclosure, wall, paving, etc.). If it has several major features, then each of these should be noted (e.g. 3 C-shaped enclosures, 1 platform, 4 stone cairns);
- (4) A description of the site, to include any of the following, if not recorded in previous studies:
 - (A) Size, horizontal extent;
 - (B) The major feature(s)'s shape, area, with representative architectural heights and widths, etc. (in metrics).
 - (C) The presence or absence of surface remains (artifacts, midden, debris, etc.), and if present, the general nature of these remains and their density and distribution;
 - (D) The presence or absence of any subsurface deposits, and if so, an assessment of the general depth and nature of these deposits.
 - (E) Photographs, or line drawings, or both;
 - (F) Drafted plan maps, which shall include a bar scale, north arrow, and indicate method used (e.g. tape and pocket transit; transit, stadia rod, and tape; tape and compass; visual estimate; etc.); and
 - (G) The condition of the site;
- (5) If excavations, augering, etc. occurred, findings must be presented under each site's description, to include:
 - (A) Location of the excavations, augering, etc. on a plan map of the site;
 - (B) Description of stratigraphic layers, with U.S.D.A. standard soil descriptions (using Munsell colors);
 - (C) Line-drawn profiles, to scale, of all test excavations through surface architecture or of all test excavations with subsurface features visible in the excavation side walls;
 - (D) Representative line-drawn profiles, to scale, of test excavations not through surface architecture or where no subsurface features are visible in the excavation side walls;
 - (E) Descriptions of features, including provenience within layers;
 - (F) Listing of artifacts, including provenience within layers;
 - (G) Listing of faunal remains, by layer;
 - (H) Listing of debris and other remains, by layer; and

- (l) Any processed radiocarbon dates, by provenience;
- (6) An assessment of site function, with reasonable and adequate supportive arguments; and
- (7) An assessment of site age.
- (c) The laboratory analyses section of the report shall include:
 - (1) An overall presentation of artifacts, to include:
 - (A) A master list;
 - (B) Measurements of each artifact, as appropriate, which can be in table form and can be presented under the next item;
 - (C) Analysis by artifact types; and
 - (D) Illustrations (line drawings or photographs, or both) of a representative sample of artifacts.
 - (2) An overall presentation of faunal and botanical remains, to include:
 - (A) A master list, presenting the species within each layer of each site and their weights in grams; and
 - (B) Analysis by species, as possible.
 - (3) An overall presentation of absolute dating, to include:
 - (A) A master list, by site and by provenience within site, which includes laboratory numbers for each date;
 - (B) Methods of collection and lab treatment; and
 - (C) For radiocarbon dates, C12/C13 ratios shall be obtained.
 - (4) Osteological analyses, if human skeletal remains are to be analyzed, the analysis shall conform to chapters 13-283 and 13-300. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42, 6E-43) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

§13-278-5 Final disposition of collections. (a) All collections, excluding human remains, from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD.

(b) Final disposition of human skeletal remains shall be in accordance with chapter 13-300. [Eff: _____] (Auth: HRS §§6E-3, 6E-6, 6E-7, 6E-8, 6E-42, 6E-43) (Imp: HRS §§6E-1, 6E-3, 6E-6, 6E-7, 6E-8, 6E-42, 6E-43)

§13-278-6 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a directive to the person not to proceed with construction in the project area, shall result in a denial or revocation of SHPD's written concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, and applicable laws.

[Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8, 6E-42 6E-43)

(Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 279

RULES GOVERNING STANDARDS FOR ARCHAEOLOGICAL
MONITORING STUDIES AND REPORTS

§13-279-1	Policy and purpose
§13-279-2	Definitions
§13-279-3	Archaeological monitoring, generally
§13-279-4	Archaeological monitoring plan
§13-279-5	Monitoring report
§13-279-6	Final disposition of collections and human skeletal remains.
§13-279-7	Penalty

Draft 10/15/98

§13-279-1 Policy and purpose. This chapter establishes standards for archaeological monitoring studies and reports, to improve the overall quality of these mitigation measures and to better protect the public's interests. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-279-2 Definitions. As used in this chapter unless the context requires otherwise:

"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in a delineated area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Cultural significance" means a historic property is of value to an ethnic group in the State due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic preservation review process" means the process specified in chapters 13-275 and 13-284, used to comply with sections 6E-7, 6E-8 and 6E-42, HRS.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic data recovery, historic data recovery, and architectural recordation.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or a criterion of cultural significance.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff: _____] (Auth: HRS §§ 6E-2, 6E-3, 6E-7, 6E-8, 6E-42,) (Imp: HRS §§ 6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-279-3 Archaeological monitoring, generally. Archaeological monitoring is a mitigation measure. It takes place only when the SHPD, authorized review archaeologist and the principle investigator of an archaeological inventory survey agree that an undertaking is highly likely to uncover additional significant historic remains that were not identified during the archaeological inventory survey or that were not mitigated by the archaeological data recovery work. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-279-4 Archaeological monitoring plan. (a) Archaeological monitoring shall be based on a written plan, which specifies:

- (1) What kinds of archaeological remains or historic properties are anticipated;
 - (2) Where in the construction area these properties are likely to be found;
 - (3) Needed fieldwork, which may include, but not be limited to, profile documentation of cultural layers' stratigraphy, drawings, photographs, excavation of exposed features;
 - (4) A provision that the archaeologist conducting the monitoring has the authority to halt construction in the immediate area of a find, in order to carry-out the plan. Construction can shift to other areas in such a case;
 - (5) A coordination meeting with the construction team and archaeologist, so the construction team is aware of the plan;
 - (6) Any laboratory work expected to be done;
 - (7) Report preparation; and
 - (8) Archiving of the collections.
- (b) This plan shall be reviewed and approved by the SHPD prior to the monitoring project, pursuant to chapters 13-275 and 13-284.
- (c) If monitoring is proposed in response to the inadvertent discovery of human skeletal remains, a written monitoring plan is not required.
- [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)
(Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-279-5 Monitoring report. A monitoring report shall include the following:

- (1) Abstract, including:
 - (A) Presence or absence of sites; and
 - (B) General findings.
- (2) Location of the study area, including:
 - (A) A portion of the relevant U.S.G.S. standard 1:24,000 topographic map showing the ahupua`a, the parcel, and the areas studied; and
 - (B) Text, which states the island, district, ahupua`a and the tax map key (TMK) of the parcel;
- (3) Reason for the monitoring;
- (4) Archaeological field methods, including:
 - (A) Number of personnel, with the names and degrees of the principal investigator and field director;
 - (B) When the work was done; and

- (C) Methods and specific techniques planned in the monitoring plan and any deviations, with explanations why;
- (5) Archaeological fieldwork. Each site studied shall be individually described, including:
 - (A) State site number and any previous numbers;
 - (B) Reference to a previous study, if the site has been recorded before;
 - (C) The site's formal type (e.g., C-shaped enclosure, platform, enclosure, wall, paving, etc.). If it has several major features, then each of these should be noted (e.g., 3 C-shaped enclosures, 1 platform, 4 stone cairns);
 - (D) Description of the site, including any of the following not recorded in previous studies:
 - (i) Size, horizontal extent;
 - (ii) The major feature(s)'s shape, area, with representative architectural heights and widths, etc. (in metrics);
 - (iii) Presence or absence of surface remains (artifacts, midden, debris, etc.), and if present, the general nature of these remains and their density and distribution;
 - (iv) Presence or absence of any subsurface deposits, and if present, an assessment of the general depth and nature of these deposits;
 - (v) Photographs, line drawings, or both; and
 - (vi) Drafted plan maps, which shall include a bar scale, north arrow, and indicate method used (e.g., tape and pocket transit; transit, stadia rod, and tape; tape and compass; visual estimate; etc.).
 - (E) If subsurface analysis occurred, findings must be presented under each site's description, including:
 - (i) Placing analysis locations on a plan map of the site;
 - (ii) Description of stratigraphic layers, with U.S.D.A. standard soil descriptions (using Munsell colors);
 - (iii) Line-drawn profiles, to scale, of all excavations through surface architecture or of all excavations with subsurface features visible in the excavation side walls;

- (iv) Representative line-drawn profiles, to scale, of excavations not through surface architecture or where no subsurface features are visible in the excavation side walls;
 - (v) Descriptions of features, including provenience within layers;
 - (vi) Listing of artifacts, including provenience within layers;
 - (vii) Listing of faunal and botanical remains, by layer;
 - (viii) Listing of debris and other remains, by layer; and
 - (ix) Any processed radiocarbon, by provenience.
- (F) An assessment of site function, with supportive arguments; and
- (G) An assessment of site age.
- (6) Laboratory analyses, including:
 - (A) An overall presentation of artifacts, including:
 - (i) A master list;
 - (ii) Measurements of artifacts, which can be in table form and can be presented under the next item;
 - (iii) Analysis by artifact types; and
 - (iv) Illustrations (line drawings, photographs or both) of a representative sample of artifacts.
 - (B) An overall presentation of faunal and botanical remains, including:
 - (i) A master list, presenting the species within each layer of each site and their weights in grams; and
 - (ii) Analysis by species, as possible.
 - (C) An overall presentation of absolute dating, including:
 - (i) A master list, by site and by provenience within site, which includes laboratory numbers for each date;
 - (ii) Methods of collection and lab treatment; and
 - (iii) For radiocarbon dates, C12/C13 ratios shall be obtained.
 - (D) Osteological analyses, if human skeletal remains are found and analyzed, such analysis shall conform with chapters 13-283 and 13-300.
- (7) If properties with cultural significance are discovered, the archaeologist shall consult with members of the relevant cultural group and consider any comments when determining appropriate treatment. The report shall describe the

consultation process, list the consulted individuals and organizations, and summarize their comments.

- (8) Additional findings on the research problems previously studied in the project area.
- (9) References.
- (10) Location of depository (archive) for collections, photographs and written site records and maps. To be presented in an appendix. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42 6E-43) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

§13-279-6 Final disposition of collections and human skeletal remains. (a) All collections, excluding human remains, from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD.

(b) If human skeletal remains are recovered during monitoring, they shall be treated as an inadvertent discovery. Any relocation of the human remains and any associated grave goods shall follow the procedures of chapter 13-300. [Eff: _____] (Auth: HRS §§6E-3, 6E-6, 6E-7, 6E-8, 6E-42, 6E-43) (Imp: HRS §§6E-1, 6E-3, 6E-6, 6E-7, 6E-8, 6E-42, 6E-43)

§13-279-7 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a directive to the person not to proceed with construction in the project area, shall result in a denial or revocation of SHPD's written concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, and applicable laws. [Eff: _____] (Auth: HRS §§6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 280

RULES GOVERNING GENERAL PROCEDURES FOR INADVERTENT
DISCOVERIES OF AN HISTORIC PROPERTIES DURING A PROJECT
COVERED BY THE HISTORIC PRESERVATION REVIEW PROCESS

§13-280-1	Policy and purpose
§13-280-2	Definitions
§13-280-3	Procedure for inadvertent discoveries
§13-280-4	Proceeding with the project in the immediate vicinity of the historic property
§§13-280-5	Penalty

Draft 10/15/98

§13-280-1 Policy and purpose. The unmonitored, inadvertent discovery of a historic property, other than a burial site, found during a project which has already gone through the historic preservation review process, needs to be addressed. This chapter provides an expedited process to handle these discoveries. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-280-2 Definitions. As used in this chapter unless the context requires otherwise:

"Agency" means any state or county governmental entity.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Cultural significance" means a historic property is of value to an ethnic group in the State due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic preservation review process" means the process specified in chapters 13-275 and 13-284, used to comply with sections 6E-7, 6E-8 and 6E-42, HRS.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic data recovery, historic data recovery, and architectural recordation.

"Mitigation plan" means the plan setting forth appropriate treatment of historic properties, burial sites or human skeletal remains.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or a criterion of cultural significance.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff: _____] (Auth: HRS §§ 6E-2, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§ 6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-280-3 Procedure for inadvertent discoveries. (a) The procedure to handle an unmonitored discovery of a historic property, other than a burial site, during the course of work on a project which has already gone through the historic preservation review process, is as follows:

- (1) Halt construction in the immediate area and do not disturb the historic property any further. No item shall be moved from the ground at the discovery location without the SHPD's approval, to prevent damage to the historic property.
- (2) Notify the state historic preservation division as soon as possible.
- (3) The SHPD shall gather sufficient information to evaluate the significance of the historic property. This may be done by:
 - (A) A field check of the site by SHPD staff;
 - (B) A field check by an archaeologist hired by the person or agency undertaking the project; or
 - (C) SHPD gathering of oral and written information.
- (4) The SHPD and the agency or person undertaking the project shall evaluate all information to determine if a significant historic property has been discovered.
- (5) If the property is deemed significant, an appropriate mitigation plan shall be jointly developed by the SHPD and agency or person undertaking the project. The mitigation plan shall specify the form of mitigation (i.e. preservation, archaeological

data recovery) and shall briefly itemize a scope of work. The plan need not be written. If the historic property has cultural significance to the native Hawaiian people or another ethnic group, the SHPD, agency or person undertaking the project shall initiate the consultation process by consulting with representatives of the relevant ethnic group and consider their comments when developing the mitigation plan.

- (6) The agency or person undertaking the project shall execute the mitigation plan. The SHPD shall verify the execution of the mitigation plan. In cases of archaeological data recovery, an archaeological data recovery report shall be prepared in accordance with the standards set forth in chapter 13-278, and submitted to SHPD for review and approval.
- (7) Any collections, excluding human remains, recovered from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD.

(b) After notification of the SHPD of the discovery, mitigation plan decisions shall be made within five working days or by a mutually agreed upon date. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-280-4 Proceeding with the project in the immediate vicinity of the historic property. The project may proceed in the area of the inadvertently discovered historic property when:

- (1) The SHPD verifies the execution of the mitigation plan;
- (2) The SHPD verifies in writing that the archaeological data recovery fieldwork is completed, with the condition that the report and final disposition of collections shall follow as per the mitigation plan; or
- (3) The SHPD verifies in writing that interim protection measures are in place for sites to be preserved, with the condition that the final preservation plan for the site will follow as per the mitigation plan. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-280-5 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a directive to the person not to proceed with construction in the project area, shall result in a denial or revocation of SHPD's written concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, and applicable laws.

[Eff: _____] (Auth: HRS §§6E-3, 6E-7, 6E-8, 6E-42, 6E-43; §§13-275, 13-284) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 281

RULES GOVERNING PROFESSIONAL QUALIFICATIONS

§13-281-1	Purpose
§13-281-2	Definitions
§13-281-3	Archaeology
§13-281-4	Architecture
§13-281-5	Architectural history
§13-281-6	Ethnography
§13-281-7	History
§13-281-8	Physical Anthropology
§13-281-9	Advice available from state historic preservation division
§13-281-10	Penalty

Draft 10/15/98

§13-281-1 Purpose. The purpose of this chapter is to establish professional qualifications for archaeologists, architects, architectural historians, ethnographers, historians, and physical anthropologists who undertake projects which must be reviewed by the state historic preservation division. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-281-2 Definitions. As used in this chapter unless the context requires otherwise:

"Authorized review archaeologist" means an archaeologist who meets the qualifications enumerated in this chapter, and is hired by a person to personally review archaeological reports and plans prepared for the person by another archaeologist.

"Historic preservation review process" means the process specified in chapters 13-275 and 13-284, used to comply with sections 6E-7, 6E-8 and 6E-42, HRS.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff: _____] (Auth: HRS §§ 6E-2, 6E-3, 6E-7, 6E-8, 6E-42)(Imp: HRS §§ 6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-281-3 Archaeology. (a) An archaeologist serving as principal investigator for any archaeological project shall possess the following professional qualifications:

- (1) A graduate degree in anthropology, with a specialization in archaeology;
- (2) At least two years of archaeological experience in Hawaii (which can be made up of discontinuous periods of full-time or

- part-time field work adding up to one year) or have participated fully in ten archaeological field projects; and
- (3) A demonstrated ability to carry research to completion, usually shown by completed theses, publications, and manuscripts.
- (b) An archaeologist serving as a field director for any archaeological project shall possess the following professional qualifications:
- (1) A bachelor's degree, and ideally a graduate degree, in anthropology, with a specialization in archaeology;
 - (2) At least two years of archaeological experience in Hawaii (which can be made up of discontinuous periods of full-time or part-time field work adding up to one year) or have participated fully in ten archaeological field projects; and
 - (3) A demonstrated ability to carry research to completion, usually shown by completed theses, publications, and manuscripts.
- (c) Field directors without a graduate degree in anthropology with a specialization in archaeology shall be overseen by a qualified principal investigator.
- (d) Authorized review archaeologists shall possess the following qualifications:
- (1) Ph.D. in anthropology with a specialization in archaeology and at least five years of archaeological experience in Hawaii as a principle investigator; or
 - (2) A graduate degree and at least three years experience reviewing archaeological reports for SHPD within the past ten years. [Eff:] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E42)

§13-281-4 Architecture. An architect shall possess one or both of the following professional qualifications:

- (1) A State license to practice architecture; and
- (2) A professional degree in architecture and at least two years of full-time professional experience. [Eff:] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-281-5 Architectural history. An architectural historian shall possess one or both of the following professional qualifications:

- (1) A graduate degree in architectural history, art history, historic preservation, or a closely related field with coursework in American architectural history.
 - (2) A bachelor's degree in architectural history, art history, historic preservation, or a closely related field plus one of the following:
 - (A) At least two years of full-time research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution.
 - (B) Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.
- [Eff:] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-281-6 Ethnography. An ethnographer shall possess the following professional qualifications:

- (1) A graduate degree in anthropology, with a specialization in cultural or social anthropology, or in a closely related field;
- (2) A bachelor's degree in cultural or social anthropology, or in a closely related field, plus one of the following:
 - (A) Two or more years of full-time experience in research, writing, teaching, interpretation or other demonstrable professional activity with an academic institution, historic organization or agency, historic preservation consulting firm, or other professional institution;
 - (B) Substantial contribution through research and publication to the body of scholarly knowledge in cultural or social anthropology, ethnohistory or related fields; or
- (3) Four or more years of full-time experience conducting research on or practicing the culture and history of ethnic groups in the State of Hawaii, and
- (4) In addition to meeting the qualifications of (1), (2) or (3), the person shall meet three or more of the following requirements:
 - (A) Be conversant in the language of the applicable ethnic group addressed by the ethnographic study;

- (B) Have a demonstrated familiarity with the traditions, customs, practices and beliefs of the applicable ethnic group addressed by the ethnographic study;
- (C) Have a demonstrated ability to conduct and document interviews for ethnographic or historical purposes and to summarize information gained from interviews;
- (D) Contributed through teaching, presentations, research or publication to the body of knowledge in cultural or social anthropology, ethnohistory, or related fields;
- (E) Have a working knowledge of the historic preservation review process. [Eff:] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-281-7 History. An historian shall possess one or both of the following professional qualifications:

- (1) A graduate degree in history or a closely related field.
- (2) A bachelor's degree in history or a closely related field, plus at least one of the following:
 - (A) Two or more years of full-time experience in research, writing, teaching, interpretation or other demonstrable professional activity with an academic institution, historic organization or agency, museum, historic preservation consulting firm, or other profession institution,
 - (B) Substantial contribution through research and publication to the body of scholarly knowledge in the field of history. [Eff:] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-281-8 Physical anthropology. A physical anthropologist shall possess the following professional qualifications:

- (1) A graduate degree in anthropology or anatomy with a specialization in physical anthropology and human osteology or forensic anthropology.
- (2) Demonstrated ability to carry research to completion, usually shown by completed theses, publications, and manuscripts.

[Eff:] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42, 6E-43)(Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

§13-281-9 Advice available from state historic preservation division.

The state historic preservation division, upon request, shall advise agencies or persons whether an individual meets the minimal professional qualifications. The state historic preservation division shall maintain a list of archaeologists who are known by the SHPD to meet these minimal professional standards. Copies of this list shall be available upon request.

[Eff:] (Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-281-10 Penalty. Should any archaeological, historical, ethnographic, architectural, architectural historical, or physical anthropological (osteological) work be conducted as part of the historic preservation review process (chapters 13-275, 13-284) or under an archaeological permit (chapter 13-282) with a principal investigator or field director who fails to meet minimal professional standards, that work shall be automatically rejected, the SHPD's written concurrence for the relevant step in the historic preservation process shall be denied, and any archaeological permit shall be revoked or denied, and the penalties of chapters 13-275 and 13-282 and section 6E-11, HRS, shall be applied as appropriate. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8, 6E-11, 6E-42) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-11, 6E-42).

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 282

RULES GOVERNING PERMITS FOR ARCHAEOLOGICAL WORK

§13-282-1	Policy and purpose
§13-282-2	Definitions
§13-282-3	Permit
§13-282-4	Fees
§13-282-5	Contract archaeology permits
§13-282-6	Research archaeology permits
§13-282-7	Notification to landowners and the county of permitted archaeological work
§13-282-8	Permit taken to project location
§13-282-9	Duration of the permit
§13-282-9	Penalty

Draft 10/15/98

§13-282-1 Policy and purpose. Chapter 6E, HRS, authorizes the department of land and natural resources to regulate archaeology throughout the State. This rule establishes a permit system for all archaeological field work undertaken anywhere in this State to improve the overall quality of archaeological work, to obtain reports on all work for the Hawaii inventory of historic places, and thereby to better protect historic properties in the public's interest. [Eff:] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-2 Definitions. As used in this chapter unless the context requires otherwise;

"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Agency" means any state or county governmental entity.

"Applicant" means archaeological consulting firms, museums, universities, non-profit institutions, or scholars who desire to undertake archaeological field work in Hawaii and whose principal investigator meets the minimal professional standards for archaeologists as provided in chapter 13-281.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in a delineated area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Contract archaeology" means archaeological studies undertaken as a part of or in anticipation of the historic preservation review process required by sections 6E-8 or 6E-42, HRS or the National Historic Preservation Act.

"Cultural significance" means a historic property is of value to an ethnic group in the State due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

"Department" or "DLNR" means the state department of land and natural resources.

"Detailed mitigation plan" means the specific plan for mitigation, including, but not limited to, a preservation plan, an archaeological data recovery plan, an ethnographic data recovery plan, an historic data recovery plan, a burial treatment plan, and an architectural recordation plan. The detailed mitigation plan serves as a scope of work for mitigation.

"Historic preservation review process" means the process specified in chapters 13-275 and 13-284, used to comply with sections 6E-7, 6E-8 and 6E-42, HRS.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic data recovery, historic data recovery, and architectural recordation.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"Research archaeology" means archaeological studies undertaken only for research purposes, which are not related to any development project requiring review under sections 6E-8 or 6E-42, HRS

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or a criterion of cultural significance.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff:] (Auth: HRS §§ 6E-2, 6E-3,

6E-7, 6E-8, 6E-42) (Imp: HRS §§ 6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-282-3 Permit. No archaeological projects shall be undertaken until a permit is first obtained from the SHPD. Permits shall only be issued to archaeological consulting firms, museums, universities, non-profit institutions, or scholars whose principal investigator meets the minimal professional standards for archaeologists as provided in chapter 13-281.

[Eff:] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-4 Fees Each contract archaeology permit application for a survey project shall be accompanied by a filing fee of \$200, plus \$100 per acre or major fraction, up to a maximum of \$2,000. All fees shall be in the form of cash, certified or cashier's check, and payable to the Hawaii historic preservation special fund. [Eff:] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-5 Contract archaeology permits. (a) A contract archaeology project either identifies significant historic properties through archaeological survey or mitigates effects through archaeological data recovery, monitoring or archaeological work related to preservation.

(b) An archaeological survey permit shall be required to conduct an archaeological survey. An archaeological survey may be either an archaeological inventory survey or a preliminary archaeological or reconnaissance survey. The latter is not intended to meet the minimal standards of chapters 13-276 or 13-284 or to be submitted as an inventory survey for review. Rather it is to provide people with a general understanding as to the character of any sites which may be present in a certain area.

(c) When applying for a survey permit, the following shall be submitted to the SHPD:

(1) A scope of work, which shall:

- (A) Specify where the work is to occur (the island, district, ahupua`a and TMK parcel);
- (B) State who the work is being done for;
- (C) Present the aim of the work related to the client's development concerns; and
- (D) Briefly identify data to be collected to address these concerns.

- (2) A resume indicating the principal investigator of the work meets minimal professional standards covered in chapter 13-281, if the resume is not on file at the SHPD;
 - (3) An approximate schedule for the start and completion of the work; and
 - (4) Name and address of the hiring agency or person.
- (d) The SHPD shall send an archaeological survey permit within ten working days of receipt of a complete application.
- (e) The SHPD approval letter for a detailed mitigation plan or monitoring plan shall serve as the archaeological mitigation permit, assuming the consulting archaeologist for the work is specified in the plan. Should the archaeologist who is to implement the plan be someone other than the one who prepared the detailed mitigation plan or monitoring plan, a notification letter indicating the intention to implement the plan with a different archaeologist shall be submitted to SHPD. A resume indicating the principal investigator of the work meets minimal professional standards covered in chapter 13-281, if the resume is not on file at the SHPD, shall be included with the letter. SHPD shall provide within ten working days of receipt of the notification letter a written acknowledgment of the change in archaeologists. The acknowledgment letter shall constitute the archaeological mitigation permit.
- (f) If the scope of work is to be substantially changed, then an amendment to the scope must be approved by the SHPD.
- [Eff:] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-6 Research archaeology permits. (a) When applying for a permit, the following shall be submitted to the SHPD:

- (1) An acceptable research proposal. This proposal shall:
 - (A) Specify where the work is to occur (the island, district, ahupua`a and TMK parcel);
 - (B) Present research questions to be studied;
 - (C) Identify data needed to address these questions; and
 - (D) State methods that will be used to gather these data.
- (2) A resume indicating the principal investigator of the fieldwork meets minimal professional standards covered in chapter 13-281, if the resume is not on file at the SHPD. If the application is intended as a master's degree thesis project, then the graduate advisor must serve as a co-principal investigator and a resume must be on file at the SHPD;

- (3) An approximate schedule for the start and completion of the work;
 - (4) A letter from the landowner allowing access on their land to do the work; and
 - (5) Evidence that the applicant undertook a consultation process with ethnic organizations and individuals for whom the historic properties may be of cultural significance. The comments of these individuals or organizations shall be considered when preparing the research proposal. The proposal shall include a list of individuals and organizations contacted, and shall summarize their input.
- (b) SHPD shall review the application as follows:
- (1) If the application is acceptable (contains all items in section 5(a) of this rule), a permit shall be sent to the applicant within ten working days;
 - (2) If the application is not acceptable, the SHPD shall notify the applicant by letter within ten working days, stating why the application was not acceptable. If missing information or revisions are solely needed, this information shall be specified so the application can be finished.
- (c) Each permit shall include the following conditions:
- (1) A requirement that the research proposal shall be followed;
 - (2) A requirement that the applicant present the findings to the relevant local community, after the fieldwork is concluded, so the community is aware of work completed and initial findings;
 - (3) Submittal within 1 month of the conclusion of fieldwork, a brief report on findings to consist of:
 - (A) A map locating all sites studied, to be on a portion of the relevant U.S.G.S. standard 1:24,000 topographic map.; and
 - (B) A table listing each site, its major architectural features, its probable function, and the nature of work at each site (mapping, description, surface collection, test excavation);
 - (4) Submittal of five copies of the final report of the research work to the SHPD within twelve months of the issuance of the permit for appropriate archiving. The report should comply with the reporting requirements in chapter 13-277, with approved exclusions;
 - (5) A requirement that all collections, excluding human remains, from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with

private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD;

- (6) A requirement that the applicant shall comply with all applicable statutes, ordinances, rules and regulations of the federal, state and county governments; and
- (7) A requirement that the applicant shall hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant and its employees, contractors and agents under the permit.

(d) If the research proposal's fieldwork plans or reporting deadlines are to be modified, then an amendment to the proposal must be approved by the SHPD. [Eff:] (Auth: HRS §6E-3)
(Imp: HRS §6E-3)

§13-282-7 Notification to landowners and the county of permitted archaeological work. The applicant is responsible for notifying the landowner and the relevant county planning department that a permit has been approved. If the permitted work is to take place in the state conservation district, the applicant shall notify the department of land and natural resources' land division. A copy of the permit shall be included with all notifications. [Eff:] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-8 Permit taken to project location. The permit shall be taken to the location of the archaeological fieldwork, so it can be shown to any members of governmental agencies or the public questioning the authorization of the work. [Eff:] (Auth: HRS §6E-3)
(Imp: HRS §6E-3)

§13-282-9 Duration of the permit. Each permit shall be one year in duration, from the time of permit issuance. If an extension is desired, then a request for an extension shall be submitted to the SHPD sixty days before the original permit expires. [Eff:] (Auth: HRS §6E-3)
(Imp: HRS §6E-3)

§13-282-10 Penalty. Should archaeological work take place without a permit or should work not fulfill a permit's conditions:

- (1) The SHPD shall notify the landowner(s) where the work is occurring and any relevant agency;
- (2) The principal investigator of the archaeological work or the firm, or both shall be subject to penalties as covered under section 6E-11, HRS;
- (3) The principal investigator of the archaeological work or the firm, or both, shall forfeit all items collected and all recorded information to the SHPD, if the violation intentionally occurred. Intentionally shall mean that the violation occurred after the principal investigator or the firm, or both received a copy of this rule, thereby being aware that the rule shall be followed; and
- (4) A permit may be revoked. [Eff:] (Auth: HRS §§6E-3, 6E-11) (Imp: HRS §6E-3)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 283

RULES GOVERNING STANDARDS FOR OSTEOLOGICAL ANALYSIS OF
HUMAN SKELETAL REMAINS

§13-283-1	Policy and purpose
§13-283-2	Definitions
§13-283-3	Osteological analysis and recording
§13-283-4	Report of osteological analysis
§13-283-5	Treatment of human skeletal remains
§13-283-6	Penalty

Draft 10/15/98

§13-283-1 Policy and purpose. (a) Burial sites with human skeletal remains have cultural significance and are sensitive historic properties, significant to the descendants and to the relevant cultural group. Burials are quite different from other historic properties. Human remains, under American common law, cannot be owned; rather the burials are held in trust for their descendants. Treatment of burials must meet this trust with the utmost sensitivity. It is the Department of Land and Natural Resource's policy to preserve burials in place when at all possible. However, when removal must occur, and if osteological analysis must take place, it is the Department of Land and Natural Resource's policy that this be done with the utmost sensitivity and with high standards of analysis.

(b) This rule establishes standards for osteological analysis of human skeletal remains, when analysis is done to determine ethnicity of skeletal remains, to ensure the quality of burial analysis and thereby to better protect the public's interests. [Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-8, 6E-43) (Imp: HRS §§6E-3, 6E-8, 6E-43)

§13-283-2 Definitions. As used in this chapter unless the context requires otherwise:

"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface and subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Ethnicity" means the ethnic group to which the deceased belonged by birth, such as Hawaiian, Japanese, and Chinese.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff: _____] (Auth: HRS §§ 6E-2, 6E-3, 6E-7, 6E-8, 6E-42, 6E-43) (Imp: HRS §§ 6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-283-3 Osteological analysis and recording. The procedures for osteological analysis are set forth in chapter 13-300. Recording shall involve completion of forms available at the SHPD. Only those forms which are relevant to the recovered remains are to be completed. The forms are:

- (1) Individual summary record.
- (2) Burial register form.
- (3) Skull register form.
- (4) Child burial register form.
- (5) Cranial measurements form.
- (6) Non-metric cranial traits form.
- (7) Dental observations form.
- (8) Infracranial measurements form.
- (9) Infracranial morphology form.
- (10) Vertebral non-metric traits form.
- (12) Mandible measurements form.
- (13) Dental measurements form.

Forms will be relevant, depending on the age and extent of the remains.

[Eff: _____] (Auth: HRS §§6E-1, 6E-3, 6E-8, 6E-43) (Imp: HRS §§6E-3, 6E-8, 6E-43)

§13-283-4 Report of osteological analysis. (a) A report on the osteological analysis shall be prepared by a physical anthropologist. The report shall include the following:

- (1) Abstract, including the number of individuals studied, their ethnic affiliation and the name of the historic sites with which they are associated.
- (2) Introduction.
 - (A) Reasons for the project; and
 - (B) Location of the study area which shall include a portion of the relevant U.S.G.S. standard 1:24,000 topographic map showing the ahupua`a, the parcel, and the sites from which the remains came and text, which states the island, district, ahupua`a and the tax map key (TMK) of the parcel
- (3) Laboratory methods, which shall include:
 - (A) The number of personnel, with the name and degree of the principal investigator;
 - (B) When the work was done; and
 - (C) Methods planned in the analysis and any deviations, with explanations why.

- (4) Osteological analysis: Descriptions of individuals, to include:
 - (A) The provenience--site, layer, age of layer;
 - (B) The information recorded, as required by section 13-283-4 and this section; and
 - (C) A summary for each individual, to include:
 - (i) Probable ethnic group affiliation;
 - (ii) Sex;
 - (iii) Stature;
 - (iv) Completeness and condition of remains;
 - (v) Salient morphological features of the skull, teeth and infracranial skeleton; and
 - (vi) Time since death.
- (5) Findings; and
- (6) References.

(b) The osteological report shall be submitted separately to the SHPD from the archaeological report required under chapters 13-275, 276, 278 and 284. [Eff:] (Auth: HRS §§6E-1, 6E-3, 6E-8, 6E-43) (Imp: HRS §§6E-3, 6E-8, 6E-43)

§13-283-6 Treatment of human skeletal remains. Because human remains are highly sensitive to many individuals and ethnic groups, all archaeological excavations and osteological laboratory analysis shall treat the remains with dignity and respect. [Eff:] (Auth: HRS §§6E-1, 6E-3, 6E-8, 6E-43) (Imp: HRS §§6E-3, 6E-8, 6E-43)

§13-283-7 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a denial or revocation of SHPD's written historic preservation review concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, and applicable laws. [Eff:] (Auth: HRS §§6E-3, 6E-8, 6E-11, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-8, 6E-11, 6E-42)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 284

RULES GOVERNING PROCEDURES FOR HISTORIC PRESERVATION

REVIEW TO COMMENT ON CHAPTER 6E-42 PROJECTS

§13-284-1	Purpose, applicability, and participants
§13-284-2	Definitions
§13-284-3	Conducting a historic preservation review; generally
§13-284-4	Fees
§13-284-5	Identification and inventory of historic properties
§13-284-6	Evaluation of significance
§13-284-7	Determining effects to significant historic properties
§13-284-8	Mitigation
§13-284-9	Verification of completion of the detailed mitigation plan
§13-284-10	Conclusion of the historic preservation review process
§13-284-11	Reconsideration of findings after the process is closed
§13-284-12	Discovery of previously unknown historic properties during implementation of a project
§13-284-13	Penalty

Draft 10/15/98

§13-284-1 Purpose, applicability, and participants. (a) The purpose of this chapter is to promote the use and conservation of historic properties for the education, inspiration, pleasure and enrichment of the citizens of Hawaii by articulating a historic preservation review process for projects requiring the approval of a state or county agency for a permit, license, certificate, land use change, subdivision or other entitlement to use. The review process is designed to identify significant historic properties in project areas and then to develop and execute plans to handle impacts to the significant historic properties in the public interest. The process supports the policy of chapter 6E, H.R.S., to preserve, restore and maintain historic properties for future generations.

(b) This chapter itemizes the review process that the SHPD shall follow to make comments to state and county agencies on permits, licenses, certificates, land use changes, subdivisions, or other entitlements for use which may affect historic properties, thereby meeting agency requests or meeting the opportunity to comment under section 6E-42, HRS.

(c) Participants in the historic preservation review process.

(1) The primary participants in the process are DLNR, represented by the SHPD, the agency with jurisdiction over the project, and the person proposing the project. The agency has responsibility for initiating the historic preservation review process. The agency may have others prepare the review process items. In the case of projects involving archaeological properties, the SHPD may request, within five days of receipt of any report or plan, that the applicant shall contract with an authorized review archaeologist to review any submitted reports or plans. The authorized review archaeologist shall submit its findings and comments to the SHPD.

(2) Interested persons are those organizations and individuals that are concerned with the effect of a project on historic properties. [Eff _____] (Auth: HRS §§6E-3, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-2 Definitions. As used in this chapter unless the context requires otherwise:

"Agency" means any state or county governmental entity.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in a delineated area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Architectural inventory survey" means the process of identifying and documenting the architectural historic properties in a delineated area, and providing the information to the department.

"Architectural recordation" means the form of mitigation that records and analyzes through architectural study a reasonable and adequate amount of the information about a significant historic property.

"Authorized review archaeologist" means an archaeologist who meets the qualifications enumerated in chapter 13-281, and is hired by a person to personally review archaeological reports and plans prepared for the person by another archaeologist.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consensus determination" means the evaluation of a historic property's significance, arrived at by the consensus of the SHPD and the person.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Cultural significance" means a historic property is of value to an ethnic group in the State due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

"Department" or "DLNR" means the state department of land and natural resources.

"Detailed mitigation plan" means the specific plan for mitigation, including, but not limited to, a preservation plan, an archaeological data recovery plan, an ethnographic data recovery plan, an historic data recovery plan, a burial treatment plan, and an architectural recordation plan. The detailed mitigation plan serves as a scope of work for mitigation.

"Ethnographic documentation" means the form of mitigation that records and analyzes a reasonable and adequate amount of information

about a significant historic property through interviews with knowledgeable individuals and the study of historical source materials.

"Ethnographic inventory survey" means the process of identifying and documenting historic properties in a delineated area, gathering information through interviews with individuals knowledgeable about the area and a study of historical source materials.

"Historic data recovery" means the form of mitigation that records, compiles, and analyzes a reasonable and adequate amount of information about a significant historic property prior to its destruction, through the study of historical source materials.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Interested persons" means those organizations and individuals that are concerned with the effect of a project on historic properties.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic documentation, historic data recovery, and architectural recordation.

"Mitigation commitment" means the commitment to the form(s) of mitigation to be undertaken for each significant historic property.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the proposed project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or a criterion of cultural significance.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.

"Traditional cultural property" means any historic property associated with the traditional practices and beliefs of an ethnic community or members of that community for more than fifty years. These traditions shall be founded in an ethnic community's history and contribute to maintaining the ethnic community's cultural identity. Traditional associations are those demonstrating a continuity of practice or belief until present or those documented in historical source materials, or both.

[Eff:] (Auth: HRS §§6E-2, 6E-3, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-3 Conducting a historic preservation review; generally. (a)

A historic preservation review may involve up to six procedural steps, in order to determine if significant historic properties are present and, if so, to develop and execute a detailed mitigation plan and thereby satisfactorily take into account the impact of the project on such historic properties. Any person involved in this review shall consult with the SHPD and shall obtain the written comments of the SHPD at each step of the review. Only when the review process is completed, will the SHPD's provide an opinion on the project. In cases where interim protection plans are adequately in place and data recovery fieldwork has been adequately completed, the project may also commence in the SHPD's opinion.

(b) The review steps, described in greater detail in the following sections, are as follows:

- (1) Identification and inventory, to determine if historic properties are present in the project's area and, if so, to identify and document (inventory) them;
- (2) Evaluation of significance;
- (3) Effect (impact) determination;
- (4) Mitigation commitments, committing to acceptable forms of mitigation in order to properly handle or minimize impacts to significant properties;
- (5) Detailed mitigation plan, scope of work to properly carry-out the general mitigation commitments; and
- (6) Verification of completion of detailed mitigation plan.

(c) Documents for review steps one through four may be, and usually are, submitted concurrently.

(d) A receipt date shall be stamped on all review documents received by the SHPD.

(e) The SHPD shall send its written comments on each step's submittal to the person within the amount of time specified under each section

of this rule, or by a mutually agreed upon date. Copies of SHPD written comments shall also be sent to any interested persons who have expressed concerns with the project by that point in the process. If the SHPD fails to send written comments within the set time, or by a mutually agreed upon date, then the SHPD is presumed to concur with the person's submittal.

(f) The SHPD shall afford interested persons an opportunity to comment on submittals' acceptability in accordance with this and related rules (chapters 13-276 through 13-283). Comments must be submitted in writing to the SHPD within thirty days of the SHPD's posting a notice of "no effect" determinations or posting a notice of SHPD receipt of documentation. The SHPD shall post notice of receipt of relevant documents and of issuance of SHPD letters of "no effect" at the SHPD office every Friday. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons shall contact the SHPD to obtain copies of this notice, or to find locations of documents, should they wish to review them. Any person submitting comments on any submittal shall be copied on all subsequent SHPD correspondence relating to the proposed project. [Eff:]
(Auth: HRS §§6E-3, 6E-42) (Imp: HRS §§6E-3, 6E-42)

§13-284-4 Fees. Each project proposal submitted for comment shall be accompanied by a filing fee of \$25, paid by the person. All fees shall be in the form of a personal, certified, or cashier's check, and payable to the Hawaii historic preservation special fund. [Eff:] (Auth: HRS §6E-3) (Imp: HRS § 6E-3)

§13-284-5 Identification and inventory of historic properties. (a) The person shall ensure whether historic properties are present in the project area and, if so, it shall ensure that these properties are properly identified and inventoried.

(b) A person shall first consult the SHPD to determine if the area proposed for the project needs to undergo an inventory survey to determine if historic properties are present. The tax map key for the parcel(s) involved and a map shall be submitted to the SHPD to locate and define the boundaries of the actual project. The SHPD shall supply a response in writing within thirty days of the receipt of the initiating request at the SHPD office. This response shall include a justification by the SHPD for its conclusion.

- (1) If the SHPD concludes that no significant historic sites are likely to be present due to past land disturbances (e.g., bulldozing; intensive cultivation for sugar cane, pineapple, or similar crops; chain dragging of land for cattle pastures; recent urbanization; recent lava flows) or other reasons, then the SHPD shall make this determination in the form of a "no effect" letter within thirty days; or
- (2) Alternatively, the person can submit documents claiming no significant historic sites are likely to be present. The document must present supportive evidence documenting the land altering activities (including areal extent and depth of disturbances) and documenting the likely nature and depth of historic properties that may have once existed in the area. The SHPD shall respond in writing within thirty days.
 - (A) If the SHPD agrees that no significant historic properties are present, then the SHPD shall issue a written response to the person in the form of a "no effect" determination and historic preservation review ends; or
 - (B) If the SHPD does not find the documentation satisfactory, then a letter shall be sent to the person specifying why. To proceed with the review process, the person shall correct the problems, consulting with the SHPD as needed, and resubmit the documentation or shall conduct an inventory survey, whichever is required.
- (3) The SHPD shall make all "no effect" determinations available to interested persons by posting notice of all such determinations at the SHPD office every Friday. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons have the opportunity to submit written comments on such determinations within thirty days of the notice's posting. During these thirty days, should historic properties be reported to the SHPD, the SHPD shall reconsider its response under the provisions of §13-284-12.
- (4) If the SHPD determines that an adequate survey exists and that historic properties are present, then the person shall proceed to the next step in the review process, evaluation of the significance of the historic properties according to the following section of this rule.
- (5) If the SHPD concludes an inventory survey needs to be done, this survey shall identify all historic properties and gather

enough information to evaluate the properties' significance. Inventory surveys fall into three main categories, and the SHPD shall indicate which category or combination of categories is needed.

- (A) An archaeological inventory survey is undertaken when the SHPD concludes that archaeological properties are present or are likely to be present. Archaeological survey often involves detailed field mapping and test excavations, laboratory analyses, and interpretive studies. Specific minimal requirements for this survey are contained in 13-276. An archaeological permit, issued by the SHPD, is required for this survey and any lesser level of archaeological survey work, as set forth in 13-282. The survey must be directed by a qualified archaeologist who meets the qualifications set forth in 13-281.
- (B) An ethnographic survey is undertaken when the SHPD concludes that traditional cultural properties are present or are likely to be present within the project area and when the project area is known to have been used by members of an ethnic community at least fifty years ago or by preceding generations. Guidelines for this survey can be obtained from the SHPD. The survey must be directed by a qualified ethnographer who meets the qualifications set forth in 13-281.
- (C) An architectural inventory survey is undertaken when the SHPD concludes that historic buildings, structures, objects, or districts are present or are likely to be present within the project area. Minimally, information shall be of sufficient quality to complete a National Register of Historic Places nomination form. The survey must be directed by a qualified historian, architect or architectural historian who meets the qualifications set forth in 13-281.

(c) If an inventory survey is needed, once it is completed, one copy of the inventory survey(s) report shall be submitted to the SHPD. If the report is an archaeological report, upon the request of the SHPD the person shall submit another copy to an authorized review archaeologist, who shall provide the SHPD with comments as to whether the report meets the minimum standards enumerated in 13-276, and specifically discuss any inadequacies. The report shall meet the requirements noted in 13-276 for archaeology; shall conform with the SHPD guidelines for ethnography; or shall meet the

requirements to complete a National Register of Historic Places nomination form(s) for architecture. When consultation is required, as specified in any of the reporting rules or guidelines for surveys, the report shall include a summary of the consultation process. Upon receipt of the authorized archaeologist's comments the SHPD shall inform the person within fifteen days of receipt of the comments or forty five days of receipt of the report, whichever is longer, if the information contained in the report is adequate or inadequate.

- (1) If the SHPD determines that the survey and/or report is inadequate (e.g., survey failed to cover the entire project area, historic properties are incompletely described, etc.), then a letter shall be sent to the person stating why the inventory survey is inadequate. To proceed with the review process, the person shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the results.
- (2) If the SHPD finds the report adequate, then the person shall be sent a written notice of acceptance.
- (3) Once the survey report is accepted, six copies of the report shall be made available to the public. Two copies shall be sent to the SHPD library with one copy going to the relevant SHPD neighbor island office's library, one copy shall be sent to the University of Hawaii at Manoa's Hamilton Library's Pacific Collection, one copy shall be sent to the Bishop Museum's library, one copy shall be sent to the University of Hawaii at Hilo's library, and one copy shall be sent to the local public library nearest to the project area.

(d) If the SHPD gives the report final acceptance and if no historic properties are present, then historic preservation review ends and the SHPD shall include in the notice of final acceptance its written "no effect" determination.

(e) If the SHPD finds the report adequate and historic properties are present, then the significance of each property shall be evaluated as discussed in the following section. [Eff:] (Auth: HRS §§6E-3, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-6 Evaluation of significance. (a) Once a historic property is identified, then an assessment of significance shall occur. The person shall make this initial assessment or delegate this assessment, in writing, to the authorized review archaeologist. This information is usually submitted

concurrently with the survey report, if historic properties were found in the survey.

(b) To be significant, a historic property shall possess integrity of location, design, setting, materials, workmanship, feeling, and association and shall meet one or more of the following criterion:

- (1) Criterion "a". Be associated with events that have made an important contribution to the broad patterns of our history;
- (2) Criterion "b". Be associated with the lives of persons important in our past;
- (3) Criterion "c". Embody the distinctive characteristics of a type, period, or method of construction; represent the work of a master; or possess high artistic value;
- (4) Criterion "d". Have yielded, or is likely to yield, information important for research on prehistory or history; or
- (5) Criterion "e". Have an important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

A group of sites can be collectively argued to be significant under any of the criteria.

(c) Prior to submission of significance evaluations for properties other than architectural properties, the person shall initiate the consultation process with one or more of the following to seek their views on the significance evaluations, particularly to fully evaluate the possibility of properties of cultural significance being present:

- (1) Members of an ethnic group who may have knowledge of traditional cultural properties in a project area;
- (2) Individuals knowledgeable of the history of the project area; or
- (3) Ethnic organizations, such as native Hawaiian organizations, for whom some of the historic properties may have cultural significance under criterion "e".

(d) Significance assessments shall be submitted to the SHPD for review. For archaeological properties, upon the request of the SHPD the person shall submit significance assessments to an authorized review archaeologist, who shall provide SHPD with comments evaluating the significance assessments and specifically addressing any questionable assessments. The concurrence of the SHPD is required before significance is finalized. The SHPD shall agree or disagree with the significance evaluations within fifteen days of receipt of the authorized review

archaeologist's comments or within forty five days of receipt of the significance evaluations, whichever is longer.

- (1) The assessment shall:
 - (A) Present a table which lists each historic property and identifies all applicable criteria of significance for each property; and
 - (B) Provide justification for classifying the property within these criteria, it being allowable to make this justification general for similar types of archaeological sites. Supportive documentation shall be cited (such as inventory survey reports);
 - (C) If an inventory survey(s) has been done to assist these evaluations and if this information is not already on file, five copies of the archaeological inventory survey report (meeting minimal report standards, see 13-276 for archaeology), the ethnographic survey (meeting SHPD report guidelines), and/or of the architectural National Register Nomination forms shall be submitted to the SHPD; and
 - (D) Evidence of any consultation shall be submitted with the assessment, to include:
 - (i) A description of the consultation process used;
 - (ii) A list of the individuals or organizations contacted; and
 - (iii) A summary of the views and concerns expressed.
- (2) If the SHPD disagrees with the initial significance assessments or if it believes more information is needed to evaluate the significance of a historic property, a letter shall be sent to the person presenting the SHPD's findings. To proceed with the review process, the person shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the initial significance assessments.
- (3) If the SHPD agrees with the initial significance assessments, a letter of agreement shall be sent to the person.
- (4) Once agreement is reached on significance of the properties, the SHPD shall enter all significance assessments in the Hawaii inventory of historic places, as consensus determinations.
- (e) If there is an agreement that none of the historic properties are significant, then historic preservation review ends and SHPD shall issue its written concurrence to the project in the form of a "no effect" determination. When significant historic properties are present, then impacts of the proposed action

on these properties shall be assessed, and mitigation commitments shall be devised as needed. [Eff: _____] (Auth: HRS §§6E-3, 6E-42)
(Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-7 Determining effects to significant historic properties. (a)

The effects or impacts of a project on significant properties shall be determined by the person. Effects include direct as well as indirect impacts. One of the following effect determinations must be established:

- (1) "No effect". The project will have no effect on significant historic properties; or
- (2) "Effect, with agreed upon mitigation commitments". The project will affect one or more significant historic properties, and the effects will potentially be harmful. However, the person has agreed to mitigation commitments involving one or more forms of mitigation to reasonably and acceptably mitigate the harmful effects.

(b) Effects include, but are not limited to, partial or total destruction or alteration of the historic property, detrimental alteration of the properties' surrounding environment, detrimental visual, spatial, noise or atmospheric impingement, increasing access with the chances of resulting damage, and neglect resulting in deterioration or destruction. These effects are potentially harmful.

(c) Effect determinations shall be submitted to SHPD for review and approval. Usually these are submitted concurrently with the survey report, significance assessments, and mitigation commitments. The determinations shall include a map showing the location of the project and a general discussion of the project's scope of work, so the nature of possible effects can be understood. For projects involving archaeological properties, upon the request of the SHPD the person shall submit the effect determinations to an authorized review archaeologist, who shall provide SHPD with comments evaluating the effect determinations, and specifically assessing any questionable determinations.

- (1) If the SHPD disagrees with the effects determinations, a letter that specifies the disagreements shall be sent within fifteen days of SHPD receipt of the authorized review archaeologist's comments or within forty five days of receipt of the effect determinations, whichever is longer. To proceed with the review process, the person shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the effect determinations.

- (2) If the SHPD agrees with the effect determinations, the SHPD shall send a letter of agreement within fifteen days of SHPD receipt of the authorized review archaeologist's comments or within forty five days of receipt of the effect determinations, whichever is longer.

(d) No effect determinations for architectural properties shall be expedited when the SHPD agrees with the person that minor changes to a building or structure will not affect its significant character. Because these changes are typically non-controversial and require prompt processing, the SHPD shall write its concurrence as a "no effect" determination.

(e) When the SHPD issues its determination that the action shall have "no effect" on significant historic properties, the historic preservation review ends. When the determination of the SHPD is that the project will have an "effect, with agreed upon mitigation commitments", then detailed mitigation plans shall be developed by the person and approved by SHPD, as discussed in the following section. [Eff:] (Auth: HRS §§6E-3, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-8 Mitigation. (a) If a project will have an "effect" (impact) on significant historic properties, then a mitigation commitment proposing the form of mitigation to be undertaken for each significant historic property shall be submitted by the person to the SHPD for review and approval. For projects affecting archaeological properties, upon the request of the SHPD the person shall submit the mitigation determinations to an authorized review archaeologist, who shall provide SHPD with comments discussing the mitigation commitments, and specifically addressing any questionable proposals. Usually this proposed commitment is submitted concurrently with the survey report, significance evaluations, and effects determinations, if significant historic properties are present in the project area and will be affected.

- (1) Mitigation may occur in five forms.
 - (A) Preservation, which may include avoidance and protection (conservation), stabilization, rehabilitation, restoration, reconstruction, exhibition with interpretation of significance, or traditional cultural activity. Not all of these preservation elements are mutually compatible.
 - (B) Architectural recordation, which involves the photographic documentation and possibly the measured drawing of a building, structure or object prior to its destruction.

- (C) Archaeological data recovery, which enables the recovery of an adequate and reasonable amount of the significant information from a significant historic property prior to its destruction. Data recovery may include archaeological mapping, surface collection, excavation, laboratory analyses, and interpretive analyses.
 - (D) Historical data recovery, which involves researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be destroyed.
 - (E) Ethnographic documentation, which involves interviewing knowledgeable individuals and researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be destroyed.
- (2) If properties with cultural significance, so evaluated under criterion "e", as defined in § 13-284-6(b)(5) are involved, the person shall initiate a consultation process with one or both of the following on the proposed form(s) of mitigation, so their concerns can be considered:
- (A) Ethnic organizations, such as native Hawaiian organizations, for whom the historic properties are of cultural significance; or
 - (B) In the case of a traditional cultural place, members of the ethnic community who have knowledge of the traditional cultural property.
- (3) This proposed mitigation commitment must include:
- (A) A table of the significant historic properties, indicating which form or forms of mitigation is proposed for each property -- preservation, archaeological data recovery, architectural documentation, historical documentation, and/or ethnographic documentation;
 - (B) Brief text justifying these proposed treatments. Similar sites can be discussed together in this justification; and
 - (C) If culturally significant properties are involved, a description of the consultation process used, a list of the individuals and organizations contacted, and a summary of the views and concerns expressed.
- (b) If the proposal is not acceptable, SHPD shall send a letter outlining needed changes, within fifteen days of receipt of the authorized review archaeologist's comments or within forty five days of receipt of the mitigation commitments, whichever is longer. To proceed with the review process, the

person shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the mitigation commitments.

(c) If the commitments are acceptable, the SHPD shall send a determination letter concurring with the proposed project within fifteen days of receipt of the authorized review archaeologist's comments or within forty five days of receipt of the mitigation commitments, whichever is longer.

(d) If identified unmarked burial sites are present, the relevant island burial council of the Department must approve the proposed mitigation commitments for this type of historic property in the case of native Hawaiian burials, following HRS §6E-43 and §13-300-33.

(e) After mitigation commitments are accepted by SHPD, the person shall provide detailed plans for the mitigation work to the SHPD for review and approval. For projects involving archaeological properties, upon the request of the SHPD the person shall submit another copy to an authorized review archaeologist, who shall provide SHPD with comments as to whether the detailed mitigation plans meet the minimum standards, and specifically discuss any inadequacies. The approved plans shall serve as scopes of work for mitigation.

- (1) Archaeological data recovery plans shall meet the minimal standards for data recovery as provided in 13-277. Qualifications of the archaeologist directing this work shall comply with 13-281. An archaeological permit from the SHPD is required to undertake this work, see 13-282. Plans may include monitoring of construction by a professional archaeologist where further significant historic remains are likely to be found after data recovery. Minimal standards for the monitoring and report shall comply with 13-279. Qualifications of the archaeologist directing the monitoring shall comply with 13-281.
- (2) Architectural recordation plans' photographic components shall meet the minimal standards as provided by historic American building survey (HABS) photographic specifications. Qualifications for the historian, architect, or architectural historian directing this work shall comply with 13-281.
- (3) Historical data recovery plans shall conform with SHPD guidelines for historic documentation. Qualifications for the historian directing this work shall comply with 13-281.
- (4) Ethnographic documentation plans shall conform with SHPD guidelines for ethnographic documentation. Qualifications for the ethnographer directing this work shall comply with 13-281.
- (5) Preservation plans shall meet the minimal standards as provided by §13-278 for archaeological properties and

traditional cultural properties and the Secretary of the Interior's standards for historic preservation projects for architectural properties.

- (A) If preservation plans involve historic properties of cultural significance, the person shall consult with interested members of the relevant cultural group with which the properties are associated, such as Hawaiian organizations and individuals for any such native Hawaiian properties. The plans shall describe the consultation process used, list the individuals and organizations consulted, and summarize the views and concerns expressed.
- (6) Any interested persons may comment on the detailed mitigation plans. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the detailed mitigation plans. The SHPD shall take all comments into consideration when issuing its letter of acceptance or non-acceptance of the plans.
- (7) If a detailed mitigation plan is not acceptable, SHPD shall send a letter outlining needed changes, within fifteen days of receipt of the authorized review archaeologist's comments or within forty five days of receipt of the plan, whichever is longer. To proceed with the review process, the person shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the plan.
- (8) If a detailed mitigation plan are acceptable, the SHPD shall send a letter of agreement within fifteen days of receipt of the authorized review archaeologist's comments or within forty five days of receipt of the plans, whichever is longer. Once the plan is accepted, work can then proceed on the plan.
- (9) If unmarked burials are involved, the detailed mitigation plan must be covered under a burial treatment plan, as specified in 13-300. This treatment plan can serve as the burial site component of an archaeological data recovery plan (in cases of disinterment and reinterment elsewhere) or of a preservation plan. [Eff:] (Auth: HRS §§6E-3, 6E-42)
(Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-9 Verification of completion of the detailed mitigation plan.

- (a) Once the detailed mitigation plans are carried out, a request for

verification shall be submitted by the person to the SHPD. This request shall document completion of the detailed mitigation plan's tasks -- usually in the form of a completion report, with one copy submitted. Projects involving archaeological data recovery reports shall submit one copy of the report to an authorized review archaeologist, who shall provide SHPD with comments as to whether the report meets the minimum standards, and to specifically address any inadequacies.

(b) If the SHPD disagrees that the work has been successfully completed, it shall send a letter noting uncompleted tasks or inadequately completed tasks within thirty days of receipt of the request. To proceed with the review process, the person shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the completion report.

(c) If the SHPD agrees that the work has been successfully concluded, SHPD shall send a verification letter within thirty days and the historic preservation process is concluded.

(d) In cases involving preservation, archaeological data recovery, and/or architectural recordation, the person has the option to request an accelerated, 2-step verification, understanding that construction projects often need to proceed rapidly and that a completion report is often finished months after fieldwork is completed.

- (1) Step 1. The person shall submit documentation to the SHPD indicating that data recovery fieldwork, architectural recordation, and/or interim protection measures for properties to be preserved have been successfully completed. The SHPD writes a letter within thirty days to the person agreeing and stating construction may proceed, with the understanding that Step 2 must be completed to conclude the historic preservation process. If the measures have not been successfully completed, the SHPD shall write a letter within thirty days to the person indicating what needs to be completed. To proceed with the review process, the person shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the documentation.
- (2) Step 2. The person shall submit to the SHPD a completion report for the data recovery work, architectural recordation, and/or final preservation work. The SHPD shall write a letter to the person within thirty days stating the completion report is acceptable and that the historic preservation process is concluded. If the completion report is not acceptable, the SHPD shall write a letter within thirty days to the person indicating needed changes. To proceed with the review process, the person shall correct the problems, consulting with

the SHPD as needed to resolve differences, and resubmit the completion report.

(e) In cases involving solely historic data recovery and/or ethnographic documentation where no field study of the historic properties is to occur, the person has the option to request an accelerated verification process to proceed with the construction project and to submit a completion report at a later date, agreed upon with the SHPD. The person shall submit the request in writing to the SHPD with reasons and with a date for submittal of the completion report. If the SHPD agrees, it shall send a letter to the person within thirty days to the person stating construction may proceed, with the agreement that the report shall be submitted to the SHPD by the agreed upon date and shall then be reviewed in accordance with §13-284-9(a-c). If the SHPD does not agree with the request, the SHPD shall write a letter within thirty days to the person indicating the SHPD's concerns. If the person wishes to proceed with the accelerated verification process, the person shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the request.

(f) Once a final report is accepted, the person shall ensure that six copies are made available to the same repositories as the survey report noted in §13-284-5(c)(3). [Eff:] (Auth: HRS §§6E-3, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-10 Conclusion of the historic preservation review process.

(a) The historic preservation review process ends when:

- (1) SHPD agrees that adequate procedures have been taken to determine if historic properties are likely to be present in the project area, and no historic properties are found to be present or historic properties are considered unlikely to be present;
 - (2) SHPD agrees that no significant historic properties are present;
 - (3) SHPD agrees that the project shall have "no effect" on significant historic properties that are present; or
 - (4) SHPD agrees to a detailed mitigation plan to handle an effect to significant historic properties that are present and this plan is verified by the SHPD to have been successfully executed.
- [Eff:] (Auth: HRS §§6E-3, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-11 Reconsideration of findings after the process is closed.

(a) The SHPD shall reconsider the findings under §§ 13-284-5 (adequate identification/inventory procedures), 13-284-6 (significance evaluations), 13-284-7 (determination of effects), and 13-284-8 (mitigation), when new information is submitted by an interested party with a request for reconsideration. To be considered, the inquiry must address specific problems in the findings with supportive new evidence presented. The person conducting the project and the agency responsible for the permit or action shall be promptly notified by the SHPD of the request for reconsideration. An inquiry to the SHPD shall not suspend action on a project, but the person and agency shall take all measures to avoid adverse effects to significant historic properties while the SHPD is reviewing a request. Within 10 working days of receipt of the request at the SHPD office, the SHPD shall advise the interested party, the person undertaking the project, and the agency involved, in writing of the SHPD conclusions.

(b) If the SHPD uncovers new information changing its findings, the SHPD shall advise the person undertaking the projects and the agency responsible for the permit or action of the SHPD conclusions.

(c) If the SHPD conclusions identify a previously unknown historic property, then the expedited review process in §§ 13-284-12 and 13-280 shall be followed.

(d) If the SHPD conclusions identify an inaccurate significance evaluation, an inappropriate general mitigation commitment, or a flaw in the detailed mitigation plan, then the SHPD, the person undertaking the project, and the agency responsible for the permit or action shall attempt to reach agreement on how to correct the problem. [Eff:] (Auth: HRS §§6E-3, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-12 Discovery of previously unknown historic properties during implementation of a project. If a previously unknown historic property is found during the implementation of a project, then the historic preservation review process shall be reopened. This action, however, applies only to the immediate area where a historic property is discovered, and the historic preservation review process shall be accelerated, following the procedures of 13-280. [Eff:] (Auth: HRS §§6E-3, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-13 Penalty. Failure to obtain the written comments of the SHPD in accordance with this chapter shall result in a directive to the person not to proceed with the project, and the person may be subject to applicable sanctions under the law. [Eff:] (Auth: HRS §§6E-3, 6E-42, 6E-11) (Imp: HRS §§6E-1, 6E-3, 6E-42)